

HONG KONG / JUDGMENT

HKSAR v. MD SHAJU

[2018] HKCA 869

COURT

Court of Appeal

DECIDED

21 November 2018

CASE / FILE NUMBER

CACC187/2018

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bjbj CACC 187/2018

[2018] HKCA 869 IN THE HIGH COURT OF THE HONG KONG SPECIAL ADMINISTRATIVE
REGION COURT OF APPEAL CRIMINAL APPEAL NO 187 OF 2018 (ON APPEAL FROM
DCCC NO 12 OF 2018)

BETWEEN HKSAR Respondent and MD SHAJU Applicant

Before: Hon Zervos JA in Court Date of Hearing: 21 November 2018 Date of Judgment: 21
November 2018

J U D G M E N T

The applicant seeks leave to appeal the sentence of 4 years imprisonment imposed on him after he pleaded guilty to two offences of trafficking in a dangerous drug. The first charge took place on 2 September 2017 at the junction of Hollywood Road and Aberdeen Street, Sheung Wan, and the drugs involved consisted of 10 tablets of clonazepam and 48 tablets of Ecstasy (Charge 1). The judge ignored for the purpose of sentencing the small quantity of clonazepam as it did not add to the applicant's culpability under this charge. The second charge took place on 6 October 2017, near the junction of Eastern and Second Streets, Sai Ying Pun and the drugs involved consisted of 3.13 grammes of ketamine, 1.78 grammes of cocaine, two tablets of 0.39 gramme of Ecstasy and 5.78 grammes of herbal cannabis (Charge 2). The applicant is a national from Bangladesh who at the time of the offences was a Form 8 recognizance holder. He was also on bail for the first offence when he committed the second offence. He complains that Charge 1 should have been an offence of possession of a dangerous drug and not trafficking of it. He further complains that his

sentence was very long , that he did not receive the one third discount for his guilty pleas, and that the sentences should have been concurrent. There is no substance to these complaints. He was sentenced by District Court Judge Dufton, who in his comprehensive reasons for sentence, correctly applied the relevant tariff guidelines in sentencing the applicant on Charges 1 and 2, and took the correct approach when dealing with the batch of drugs under Charge 2. He considered but rejected the claim that some of the drugs were for the applicant s own consumption, and properly took into account the aggravating features that the applicant was a Form 8 recognizance holder at the time of the two offences, and that he committed the second offence while he was on bail for the first offence. He discounted the sentence on each charge by one third for the applicant s guilty plea. He sentenced the applicant to 2 years and 10 months imprisonment on Charge 1, and 2 years and 6 months imprisonment on Charge 2. He carefully considered both sentences, and after applying the totality principle, came to a total sentence of 4 years imprisonment. No error or fault can be found in the judge s reasoning or approach in sentencing the applicant. This application is without merit and leave to appeal against sentence is refused. The applicant is reminded of his right to renew his application for leave to the Court of Appeal, but he is also warned of the consequences of doing so, which may include a direction for any loss of time spent in custody pending his appeal, if the Court were to come to the view that there was no justification for the renewal of his application. (Kevin Zervos) Justice of Appeal Miss Hermina Ng, SPP, of the Department of Justice, for the respondent The applicant appears in person PAGE - A B C D E F G H I J K L M N O P Q R S T U V A B C D E F G H I J K L M N O P Q R S T U V A B C D E F G H I J K L M N O P Q R S T U V gdi< gdIe gd) gd) gdw~ gd_j hRQ8 haG9 hw{v hLdY gd!+ gd!+ gdf% gdF(: ht5(ht5(~wngc [Content_Types].xml _rels/.rels theme/theme/themeManager.xml K Y, sQ)# theme/theme/ theme1.xml \$O}) Xp90 +PHI| PP yu 9xu5 fs+W VF7H q=. 8jd- qyI@ j!Q_ jyV` |PZ+ T ""p < 4V O&x\$ A8>v ;EUC n 8r *~P(5 .)x E /EE\} theme/theme/_rels/themeManager.xml.rels 5 6?\$Q K(M&\$R(.1 [Content_Types].xmlPK _rels/.relsPK theme/theme/themeManager.xmlPK theme/theme/ theme1.xmlPK theme/theme/_rels/themeManager.xml.relsPK <?xml version="1.0" encoding="UTF-8" standalone="yes"?> <a:clrMap xmlns:a="http://schemas.openxmlformats.org/drawingml/2006/main" bg1="lt1" tx1="dk1" bg2="lt2" tx2="dk2" accent1="accent1" accent2="accent2" accent3="accent3" accent4="accent4" accent5="accent5" accent6="accent6" hlink="hlink" folHlink="folHlink"/> setup hca.dot Windows User Microsoft Office Word Judiciary Hong Kong Title <?xml version="1.0" encoding="UTF-8" standalone="no"?><b:Sources SelectedStyle="\APA.XSL" StyleName="APA" xmlns:b="http://schemas.openxmlformats.org/officeDocument/2006/bibliography" xmlns="http://schemas.openxmlformats.org/officeDocument/2006/bibliography"></b:Sources> <?xml version="1.0" encoding="UTF-8" standalone="no"?> <ds:datastoreItem ds:itemID="{32350B1C-2F74-470D-96D8-8B71D181D9C7}" xmlns:ds="http://schemas.openxmlformats.org/officeDocument/2006/customXml"><ds:schemaRefs><ds:schemaRef ds:uri="http://schemas.openxmlformats.org/officeDocument/2006/bibliography"/></ds:schemaRefs></ds:datastoreItem> Microsoft Word 97-2003 Document MSWordDoc Word.Document.8

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