

HONG KONG / JUDGMENT

HKSAR v. MENDY LAMIN P

[2018] HKCFI 669**COURT**

Court of First Instance

DECIDED

20 February 2018

CASE / FILE NUMBER

HCMA4/2018

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bjbj HCMA 4/2018

**[2018] HKCFI 669 IN THE HIGH COURT OF THE HONG KONG SPECIAL ADMINISTRATIVE
REGION COURT OF FIRST INSTANCE MAGISTRACY APPEAL NO 4 OF 2018 (ON APPEAL
FROM STCC 4317 OF 2017)**

BETWEEN HKSAR Respondent and MENDY LAMIN P Appellant

**Before: Hon D Almada Remedios J in Court Date of Hearing: 20 February 2018 Date of Judgment:
20 February 2018**

J U D G M E N T

On 7 December 2017, the appellant was convicted on his own plea of guilty, to one count of taking employment while being a person in respect of whom a removal order was in force, contrary to Sections 38A(a)(1)(b), and 38A(a)(2) of the Immigration Ordinance, Cap 115, the laws of Hong Kong. Upon his plea of guilty, he was sentenced to 15 months imprisonment by the Magistrate, Mr Joseph Toh, Esq. He filed a notice of appeal against conviction, and notice of appeal against sentence in Forms 101 and 102. At the trial, he had admitted certain facts of the case. He admitted that on 15 May 2014, he entered Hong Kong on the strength of a Gambian passport, and was permitted to stay as a visitor until 13 August 2014. He overstayed, and on 23 September 2014, he surrendered himself to the authorities. On 7 October 2014, he was released on Immigration Recognizance. On 25 January 2016, a removal order was issued against him and the order was served on him on 28 January 2016. As at 7 November, the date of the offence, the removal order remained in force against him. The appellant admitted that on 7 November 2017, officers of the

Immigration Department, saw him wearing labour gloves, setting up a large stall using metal bars and canvas at stall number 307 outside 47 Tung Choi Street. He admitted that on the material day, he, being a person in respect of whom a removal order was in force, had taken up employment as an odd job worker at Mong Kok. Turning first to his appeal against conviction. Save the formal grounds as stated in the form, that there was no evidence or no sufficient evidence whereupon to found a conviction, he had no written grounds of appeal. He was not legally represented in appeal hearing. In his submissions he informed in summary that he is an asylum seeker, and the money he received from social security was unable to meet his rent costs. To help avoid him getting evicted and sleeping in the street, he had no other means to help himself but by taking up the job. For that reason, he took up the job to earn an extra \$900 to pay your rent. This submission made to me is a clear admission that he had committed the offence. He had committed this offence as he was working there. He needed \$900 extra to pay for his rent. In the circumstances, there are no grounds upon which to appeal against conviction. There is nothing before this court to render your plea of guilty a nullity. The principles to be applied are set out in the case of Wong Chi Yuk [2000] 3 HKLRD 125, and none of those circumstances has been made out. In any event, the appellant has submitted to this court, his understanding and his admission to this offence. Furthermore, his plea resulted from a deliberate and informed decision from both himself, and, it is to be noted, that he was represented by counsel instructed by the Duty Lawyer Service. He clearly understood what his plea was, and did clearly understand his plea of guilty to that offence. For those reasons, this court finds there to be no merit and no grounds to substantiate any appeal against conviction, and your appeal against conviction is dismissed. I turn now to the grounds of appeal against sentence. The magistrate sentenced you to 15 months imprisonment following the case of HKSAR v Usman Butt [2010] 5 HKLRD 452, the Court of Appeal which provided a sentencing guideline for this particular offence. It held that the offence ought normally to attract a sentence of 15 months imprisonment after a plea of guilty. The magistrate had considered the mitigation put forward before him. The appellant had a clear record prior to the commission of this offence. He was 39 years of age. He was formerly a solicitor in Gambia, but had chosen to teach science instead. It had been submitted to the magistrate that the appellant had sustained injuries to his legs, and had been receiving medical treatment on a regular basis. The appellant's counsel informed the court that he had been co-operative upon his arrest, and he was remorseful. The magistrate held there was nothing in your background or the commission of the offence that could justify a departure from the usual sentencing guideline. He sentenced you to 15 months imprisonment. The appellant appeals against sentence on humanitarian grounds, and to ask this court for leniency. He has submitted that he was in effect forced to commit this crime, as if he did not take up this job, he would have been evicted from his home and resulted in him sleeping on the street. He had no other means to help himself. He further said that he has injuries to his leg, and has been going to the Caritas Medical Centre for therapy. His health has deteriorated since he came to Hong Kong. He claims he does not receive the proper healthcare whilst he is serving his term of imprisonment. For that reason, he wants to go back to Gambia, and he has, to my understanding informed the Immigration that he no longer wishes to pursue his asylum claim. As he has suffered a lot of trauma, he asks this court to exercise this court's discretion on humanitarian grounds, to reduce

his sentence of imprisonment. I see nothing in these further grounds submitted to the court to depart from the guidelines as stated in Usman Butt, and in those circumstances, the appeal against sentence is dismissed. (S. D Almada Remedios) Judge of the Court of First Instance High Court Ms Chan Wan Ting, Florrie, SPP of the Department of Justice, for the respondent The appellant appeared 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 hZw) gdWE hhsN gdWE h!U" gdg1 [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=. 8}d- 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"/> &tBL ,wC= GEKD ysC[,wC= ysC[lsRL , -3R setup hcma.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="{E28EB162-35E8-4D01-9584-2B045C66D4DE}" 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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