

HONG KONG / JUDGMENT

# HKSAR v. MENG Wei

## COURT

Court of Appeal

## DECIDED

28 October 1997

## CASE / FILE NUMBER

CACC465/1997

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b1bj&amp; IN THE COURT OF APPEAL 1997, No.465 (Criminal) BETWEEN HKSAR and MENG Wei

Coram: Power, V.-P., Mayo, J.A. & Stuart-Moore, J. Date of Hearing: 28th October 1997 Date of Judgment: 28th October 1997

## J U D G M E N T

Stuart-Moore, J. (giving the judgment of the Court): On 21st July 1997 the Applicant pleaded guilty to seven charges in the District Court before His Honour Judge Christie. The charges all stem from the theft by finding (charge

- 1) of an American Express card in the name of Angela Hui. Four charges related to the obtaining by deception in various shops of goods valued at over \$60,000. The sixth charge, of attempted deception, was where the series of fraudulent transactions ended. The name on the card was noticed by a member of the staff in a shop to be in the name of a female. The Applicant was detained in the shop but he managed briefly to escape by squirting some noxious fluid from an aerosol canister into the eyes of a member of staff. This incident formed the subject matter of the seventh charge, namely, assault occasioning actual bodily harm. A chase ensued and the Applicant was caught. He was found in possession of vouchers relating to three of his earlier frauds. The Applicant was an overnight stayer in Hong Kong. The learned Judge accepted that the Applicant had found the credit card at Kai Tak Airport and that this was a theft by finding. He made all of the sentences relating to the credit card concurrent, amounting in total to 12 months, and on the separate assault charge, a consecutive sentence of six months was imposed making 18 months in all. The Applicant seeks leave to appeal against the totality of those sentences. The basis of his application is that he has emigrated to the United States of America and is now the holder of a green card which permits him to reside there permanently. However, where the holder of such a card remains outside the United States for more than 365 days, the permanent resident status is

revoked unless there is an acceptable reason put forward. Obviously, as the Applicant points out in his grounds of appeal, a prison sentence is not a reason which is acceptable for these purposes. He now owns real estate in California and had spent a large amount of money on his own as well as his family's immigration papers. The Applicant will not be released until 26th April 1998, assuming the usual one-third discount for good behaviour whilst he is serving his sentence, but that will mean that he will not be able to return to the United States within the period of a year. The Applicant asks this court to take a merciful course by allowing him to rebuild his life and future in the United States and, as the Applicant has heard us state already, it is the view of the Court that that course should be adopted. The learned Judge in the District Court took into account the pleas of guilty on the deception charges when he decided that the totality for those should be a starting point of two years imprisonment. However, he reduced the total sentence by half because, by the time the matter reached court, the defendant had made full restitution of the value of the goods obtained to the credit card company that had been the victim. For the assault charge, the trial judge took a starting point of nine months and reduced that to six months to run consecutively to the other sentence. We cannot find any fault with the approach that the learned judge took. Indeed, somewhat unusually, even the Applicant does not disagree with the sentences, but merely asks us to take a merciful course so that the Applicant will be able to get back to the United States before the year expires. The Judge in the District Court would have been unaware of the far reaching consequences that his sentence would involve, and we feel that if he had been aware he would have made a suitable adjustment to take account of these. In these circumstances we shall reduce the sentence by one month in order that the sentence does not create the additional and disproportionate punishment that would result from the Applicant being unable to return to the United States within a year of his departure. Accordingly, we shall grant leave to appeal and, treating this hearing as the hearing of the appeal, we shall quash the original sentence of six months for the assault occasioning actual bodily harm and replace that with a sentence of five months to run consecutively to the sentences for deception and theft. That will mean that the sentence will now be one of 17 months imprisonment in all. (N.P. Power) Vice-President (Simon Mayo) Justice of Appeal (M. Stuart-Moore) Judge of the Court of First Instance of the High Court Mr. D.G. Saw, S.C. & Mr. Johnny Chan (D.P.P.) for the Respondent. Applicant in person. PAGE PAGE

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