

HONG KONG / JUDGMENT

HKSAR v. MOK CHI HO

COURT

Court of First Instance

DECIDED

3 December 2003

CASE / FILE NUMBER

HCMA999/2003

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bjbj HCMA999/2003 IN THE HIGH COURT OF THE HONG KONG SPECIAL ADMINISTRATIVE REGION COURT OF FIRST INSTANCE (Appellate Jurisdiction) MAGISTRACY APPEAL NO. 999 OF 2003 (ON APPEAL FROM EJ 100062 OF 2003)

BETWEEN HKSAR Respondent and MOK CHI HO Appellant

Before : Hon Jackson J in Court Date of Hearing : 3 December 2003 Date of Judgment : 3 December 2003 Date of Handing Down Reasons : 8 December 2003

J U D G M E N T

AUTONUMOUT On 3 December I dismissed this appeal and stated that I would hand down my reasons later. These are my reasons. AUTONUMOUT On 1 August 2003 the appellant, who is now aged 16 and who was legally represented at the time, pleaded guilty at Eastern Magistrates Court to two offences of indecent conduct towards children under the age of 16, contrary to section 146(1) of the Crimes Ordinance, Cap.

200. The child in each case was aged 13 and in a Boys Home with the appellant, and the allegation in each case was that the appellant used threatening or bullying behaviour in commission of the offence. Following upon his pleas of guilty the appellant admitted such and I see no need to go into the nature of the indecent conduct beyond saying that it was not of the worst kind. AUTONUMOUT On 13 August 2003, the appellant was placed on probation for those offences for a period of 18 months and, on 28 August, he was found to be in breach of that order. Numerous reports were called for and, on 25 September, the appellant was sent to a detention center for the original offences. That sentence was reviewed and confirmed on 9 October 2003. AUTONUMOUT In his written grounds of appeal the appellant said this I am not guilty of the offence. My sentence was too severe. Upon my enquiry of him

he told me that he was misled by his lawyer on 1 August into pleading guilty and to admitting the summary of facts and that he was not guilty of the offences. He was unable to tell me how it was that he had been misled. AUTONUMOUT In her most helpful Statement of Findings the Magistrate who imposed the Detention Centre Order, says (among other things) this [The probation order imposed by a magistrate imposed the following] conditions :

- a. that he shall reside at the Sha Tin Boys Home for a period of nine months with effect from the 13th August 2003.
- b. that he shall attend psychological treatment as directed.
- c. that he shall study, work and reside as directed by the probation officer,
- d. that he shall observe a curfew from 10.00pm to 6.00am,
- e. that he shall participate in community programs as directed. By the 28th August the Appellant was brought before the court, before [another magistrate], by the probation officer for breach of the Probation Order. From the report it is clear that the Appellant s conduct at the Sha Tin Boys home was very disruptive. He refused to co operate with staff, he refused to join the daily activities and he was frequently feigning illness, which at one stage necessitated admission to hospital. [That magistrate], having satisfied himself that the Appellant was in breach of the probation order, adjourned the matter to the 11th September for Detention Centre, Rehabilitation Centre, Reformatory School and Further Probation Officers Reports. On the 11th September the matter came before me and having read the reports I again adjourned the matter to the 25th September 2003 for further probation officers reports, further reformatory school reports, psychiatric and psychological reports. I asked for psychiatric and psychological reports as his conduct both in relation to his initial offence, ... and his conduct at Sha Tin Boys home was such as to require such an investigation, and the Reformatory School Report also suggested such a course. The offences took place at the Pui Chi Boys home and were of a particularly nasty nature. No psychiatric illness was found; the psychological report was more revealing. Paragraph 10 of this psychologist s report sets out the results of a psychological test to identify the Appellant s sexual beliefs. The final Reformatory School Report indicated that training in a reformatory school was not recommended, but stated that the Appellant had indicated a wish to reform through disciplinary training in the Correctional Services Department. He made a similar request to the probation officer. However in court he indicated that he wanted to go to rehabilitation center not to detention center. Having carefully considered all the reports I considered that Detention Centre was the only realistic sentence for this Appellant. I did offer him the opportunity of a Young Offenders Assessment Panel Report. he was advised by the Duty Lawyer, and I was informed that he wished to be sentenced immediately. I therefore sentenced him to Detention Centre on both matters. The matter came up for review on the 9th October when he requested a Young Offenders Assessment Panel Report. I refused the application, as having carefully reviewed all the reports I again concluded that

Detention Centre was the only realistic sentencing option. In my judgment a Young Offenders Assessment Panel Report at this stage would be unnecessary and it is quite clear that the Appellant is very manipulative in his aims to get the result he wants. I therefore confirmed the Detention Centre Orders. The Appellant now appeals against conviction and sentence. It is unclear whether he is appealing against the conviction in relation to the two indecency charges to which he pleaded guilty and was sentenced. An appeal against this conviction is now out of time, and there is no indication at all in any of the reports or in any mitigation subsequently offered that a plea of guilty was entered wrongly. If it is an appeal against the conviction for breach of the probation orders, he clearly admitted them and again there is no indication at all in any of the reports or in any mitigation subsequently offered that an admission of breach of the probation orders was entered wrongly.

AUTONUMOUT In my judgment the appellant's pleas before the Magistrate were wholly unequivocal and he has sought to introduce a wholly unjustified suggestion to the contrary in an attempt to avoid the sentence which was ultimately imposed upon him which sentence was entirely appropriate. AUTONUMOUT It was for all of these reasons that I dismissed his appeal. (C.G. Jackson) Judge of the Court of First Instance High Court Mr P.K. Madigan, SGC of the Department of Justice, for the Respond 1udk 1udk (#p# & `#\$ Cn:TH Uvo6 Cn:T & 6" CACV Jeannie MY MokSo ABC.dot setup Microsoft Word 9.0 Judiciary CACV Title Microsoft Word Document MSWordDoc Word.Document.8

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