HONG KONG / JUDGMENT

HKSAR v. MUHAMMAD MASOOM KHALID

COURT
Court of First Instance

DECIDED
24 June 2009

CASE / FILE NUMBER
HCMA355/2009

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bjbj HCMA355/2009 IN THE HIGH COURT OF THE HONG KONG SPECIAL ADMINISTRATIVE REGION COURT OF FIRST INSTANCE (Appellate Jurisdiction) MAGISTRACY APPEAL NO. 355 OF 2009 (ON APPEAL FROM TMCC 112 OF 2009)

BETWEEN HKSAR Respondent and MUHAMMAD MASOOM KHALID Appellant

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Before : Deputy High Court Judge Longley in Court Date of Hearing : 24 June 2009 Date of Judgment : 24 June 2009

JUDGMENT

AUTONUMOUT The appellant appeals against the sentence of 21 months imprisonment which was imposed on him by Mr Smout at Tuen Mun Magistrates Court, following his conviction after trial of one count of using a forged identity card, contrary to section 7A(1) of the Registration of Persons Ordinance, Cap. 177. AUTONUMOUT This morning the appellant has informed me that he also wishes to appeal against his conviction. No such appeal has so far been lodged and therefore, I am proceeding today to deal solely with the appeal against sentence. AUTONUMOUT The magistrate found that the appellant had gone to the Chun Wo construction site on 8 October 2008 and had asked the site foreman for a job. He produced to the site foreman a purported Hong Kong identity card in the name of Mohammad Sadiq. The site foreman took a photocopy of it. The appellant was offered a job to commence the next day. The magistrate was satisfied on the evidence that the identity card produced by the appellant was forged and that the appellant knew that it was forged. AUTONUMOUT The magistrate was told that the appellant had a clear record. In mitigation it was submitted that the appellant was a 38 year old married man whose wife and young son lived in Pakistan. He had come to Hong Kong to seek asylum. AUTONUMOUT The magistrate took the view that the relevant sentencing authority for this type of offence was the

decision of the Court of Appeal in the case of HKSAR v. Li Chang Li [2005] 1 HKLRD

864. He said that it was held in that decision that the proper starting point on a plea of guilty for using a forged identity card in order to obtain employment in Hong Kong was 15 months imprisonment with no distinction drawn between whether the offender was legally or illegally in Hong Kong. As the appellant had been convicted after trial, the magistrate took the view that in those circumstances the appropriate starting point was not less than 21 months imprisonment. Since there was no factor to justify any departing from that starting point, he sentenced the appellant to 21 months imprisonment. AUTONUMOUT I am satisfied that the reasoning adopted by the magistrate can not be faulted and the sentence of 21 months imprisonment was appropriate in the circumstances bearing in mind that the appellant had pleaded not guilty and had been convicted after trial. I dismiss the appeal against sentence. AUTONUMOUT I have to make it clear that I have not dealt with any appeal against conviction and so it will be up to the appellant to decide what course he wants to take in that regard. (P.K.M. Longley) Deputy High Court Judge Mr Prakash Lachmandas Daryanani, SPP of the Department of Justice, for HKSAR The Appellant, in person PAGE - PAGE A B C D E F G H I J K L M N O P Q R S T U V 1udk 1udk H I J K L M N O P Q R S T U V &`#$ & 6" ABC-j.dot Administrator Microsoft Word 9.0 *4<l Title Microsoft Word Document MSWordDoc Word.Document.8

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