

HONG KONG / JUDGMENT

HKSAR V. MUHAMMAD SIRAJ

COURT

Court of First Instance

DECIDED

21 March 2007

CASE / FILE NUMBER

HCMA126/2007

Source: legalref.judiciary.hk · Research copy typeset by Esheria. Not court-issued or certified.

bjbj HCMA 126/2007 IN THE HIGH COURT OF THE HONG KONG SPECIAL ADMINISTRATIVE REGION COURT OF FIRST INSTANCE MAGISTRACY APPEAL NO. hcma 126 OF 2007 (ON APPEAL FROM TMCC 4295/2006)

BETWEEN HKSAR Respondent and MUHAMMAD SIRAJ Appellant

Before: Hon Beeson J in Court Date of Hearing: 21 March 2007 Date of Judgment: 21 March 2007

J U D G M E N T

The Appellant was convicted on his own plea of two charges. The first charge was Possession of an Identity Card Relating to Another Person, contrary to section 7A(1A) of the Registration of Persons Ordinance, Cap. 177 and the second was Breach of Condition of Stay, contrary to section 41 of the Immigration Ordinance, Cap. 115. He was sentenced to 15 months imprisonment on the first charge, and three months imprisonment on the second; the sentences were ordered to run concurrently. The facts which were admitted, showed that the Appellant was a Pakistani national, who came to Hong Kong from China on 16 February 2003 and was permitted to stay for two days. He did not leave Hong Kong on the date given. On 11 December 2006, he was stopped by a police officer who asked for proof of identity. The Appellant produced a Hong Kong identity card in the name of Rehan Khan, but he did not resemble the photograph on that card. He had overstayed for 3 years and 9 months. The Appellant had a clear record and told the Magistrate, through his counsel, that he was 29, married and worked on the family farm. He had sons aged 7 and 5. Apart from his plea of guilty none of the mitigation was relevant. The Magistrate reviewed the guideline cases before sentencing. 15 months imprisonment was the proper sentence, even for an offender who pleaded guilty and had a clear record, where the overstayer used another person's identity card to cover his unlawful immigration status thus prolonging his stay, or used it to escape lawful

apprehension. The Magistrate referred to *The Queen v Shamim Nawaz* [1994] 1 HKCLR 195 and *HKSAR v Li Chang-li* [2005] 1 HKLRD 864). As there was a clear link between the Appellant's immigration status and his possession of the identity card, the guideline was applicable. For the overstaying charge the Magistrate took a starting point of 4 months based on the length of the overstay and, giving that he produced a medical certificate from a Neurosurgical Hospital in Karachi. He also produced a letter from his wife saying that she had low back pain and asking for his return as soon as possible. The Appellant said his parents are old, 55 and 75. His sons are 7 and 5. He claimed that his friend cheated him thus stranding him in Hong Kong, but he had a girlfriend in Hong Kong who had assisted him for the 3 years 9 months he had overstayed. He explained that the identity card was not stolen, but that he had found it on the ground. There is nothing put before me today which indicates that the Magistrate was wrong in imposing the sentences he did, or that he did not take note of the relevant factors. Given the dates of the offences and the length of the overstay it appears the Magistrate was generous in ordering the sentences to be concurrent it would have been appropriate for them to be consecutive but, having said that, I do not propose to disturb the Magistrate's sentences. There are no grounds which would justify my interference with these sentences and the appeal against sentence is dismissed. (C-M Beeson) Judge of the Court of First Instance Mr WONG Joseph, SGC, of Department of Justice, for the Respondent The Appellant, 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 1udk 1udk i\$&`G QVdW **^BDbn QVdW HCMA.dot setup Microsoft Word 9.0 Title Microsoft Word Document MSWordDoc Word.Document.8

Source & reproduction note

Judgment wording, source notices and original paragraph numbers are retained. Esheria supplies the layout and this PDF's page numbers; these are not the source pagination. This is a research copy, not an official or certified court document. Check quotations, citations and publication restrictions against the original source before relying on it.

ORIGINAL SOURCE https://legalref.judiciary.hk/lrs/common/ju/ju_frame.jsp?DIS=56849

CASE PAGE <https://chat.esheria.ai/case-law/hong-kong/hksar-v-muhammad-siraj-2007>

Prepared on 25 October 2026 · Esheria