

HONG KONG / JUDGMENT

HKSAR v. NG KA HING

COURT

Court of First Instance

DECIDED

21 December 2000

CASE / FILE NUMBER

HCMA985/2000

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bjbj HCMA 985/2000 IN THE HIGH COURT OF THE HONG KONG SPECIAL ADMINISTRATIVE REGION COURT OF FIRST INSTANCE MAGISTRACY APPEAL NO. 985 OF 2000 (ON APPEAL FROM TMCC 2713/2000)

BETWEEN HKSAR Respondent and NG KA HING Appellant

Before: Hon Beeson J in Court Date of Hearing: 21 December 2000 Date of Judgment: 21 December 2000

J U D G M E N T

The Appellant appeals against sentence in respect of two counts. The first was Illegally Remaining in Hong Kong without the Authority of the Director of Immigration after having landed unlawfully in Hong Kong, contrary to section 38(1)(b) of the Immigration Ordinance Cap. 115; the second charge was of Possession of Forged Identity Card, contrary to section 7A(1) of the Registration Person Ordinance Cap. 177. The facts, which the Appellant admitted, show that he was stopped in a playground and was asked for proof of identity. He took out what proved to be a forged identity card for inspection. He later admitted that he sneaked into Hong Kong by boat on 1 August 2000 and that he bought the forged identity card in China for \$500.00 from an unknown person. The Magistrate considered the facts and sought a medical report because he had been told by the Appellant that he believed he had nasal cancer. The Appellant's general health condition was shown to be satisfactory, but he was referred to the Ear-Nose-Throat Unit of Yaumatei Specialist Clinic to further investigate his alleged nasal cancer. The Magistrate proceeded to sentence the Appellant on 28 August, realizing that the first medical appointment for the specialist clinic would not be until 10 October 2000, but aware that Appellant would be given any treatment he might need in the meantime. The Magistrate considered the authority of

the R v. Shamin Nawaz MA No. 804 of 1993. He was satisfied that the Appellant possessed the forged identity card and that the Appellant had been in possession of it to obtain employment and to further his illegal remaining in Hong Kong. He considered that a 15 month sentence was appropriate in respect of the second charge and, following R v. So Man King and others (1989) 1 HKCR 142, he imposed a term of 15 months in respect of Charge 1 and ordered that the sentences run concurrently. Today on appeal the Appellant put before the Court the fact that his grandmother died in September; his father has suffered a fractured leg and his wife is now 7 months pregnant. He asked for a lenient sentence on the basis of his family hardship. He confirmed to the Court that he had been to the Ear-Nose-Throat Specialist and had been given some medication with the requirement that he was to attend for follow up if there was any re-occurrence of symptoms. There does not appear to have been any confirmation that he had nasal cancer. Although I have sympathy with the Appellant's concern for his family, there is nothing wrong or inappropriate with the Magistrate's sentence on either of these charges and accordingly, this appeal against sentence is dismissed. Note: Appellant originally filed an appeal against conviction but advised the Court, at the appeal, that as he pleaded guilty at trial he did not pursue that appeal. (C-M Beeson) Judge of the Court of First Instance Mr Martin Hui, SGC, for the DPP Ng Ka Hing, Appellant in person PAGE - PAGE - & # \$ & 6" HCMA 985/2000 Molly Cheung Normal.dot Microsoft Word 8.0 HCMA 985/2000 Title _PID_GUID Microsoft Word Document MSWordDoc Word.Document.8

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