

HONG KONG / JUDGMENT

HKSAR v. NG KONG LING

COURT

Court of Appeal

DECIDED

16 September 2003

CASE / FILE NUMBER

CACC161/2003

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

bjbj CACC 161/2003 IN THE HIGH COURT OF THE HONG KONG SPECIAL ADMINISTRATIVE REGION COURT OF APPEAL CRIMINAL APPEAL NO. 161 OF 2003 (ON APPEAL FROM DCCC NO. 62 OF 2002)

BETWEEN HKSAR Respondent and NG KONG LING Applicant

Before : Hon Woo JA and Stock JA in Court Date of Hearing : 16 September 2003 Date of Judgment : 16 September 2003

J U D G M E N T

Hon Woo JA (giving the judgment of the Court): AUTONUMOUT This is one of those cases where the judge's clear intention in sentencing cannot be carried out, causing grievance to the accused person and resulting in this application for leave to appeal against sentence before us.

AUTONUMOUT The facts are relatively simple. On 24 December 2002, the applicant was arrested and was in police custody in the period between 25 and 27 December 2002. She was charged with three offences before a magistrate in KCCC No. 20676 of 2002. On 27 December 2002, the magistrate ordered her to be remanded in custody and she was then incarcerated in the Tai Lam Centre. On 21 February 2003, she was convicted of the three offences in KCCC No. 20676 of 2002 and sentenced to a total of eight months imprisonment and a fine of \$500. On 7 April 2003, she was convicted on her own plea of a charge of burglary of non-domestic premises before Deputy Judge Candy in the District Court in DCCC No. 62 of 2002. The judge took two and a half years imprisonment as the starting point for sentence. Having allowed a reduction of one-third for giving credit to the applicant's guilty plea, the judge imposed a sentence of one year and eight months imprisonment. Taking into account the age of the applicant, being 22 years, and the principle of totality, the judge said: I therefore order that 8 months of the sentence which I have

imposed run concurrently with the sentence that you are presently serving. So, in effect, you are getting an extra 12 months. AUTONUMOUT There is no dispute on the propriety of the sentence passed by the judge. It is the way that he ordered the concurrency of the eight-month sentence that has caused difficulty. AUTONUMOUT There are two relevant statutory rules affecting the length of a sentence of imprisonment. Pursuant to section 67A of the Criminal Procedure Ordinance, Cap 221, the length of any sentence of imprisonment shall be reduced by any period during which the prisoner was in custody by reason of an order of a court made in connection with any proceedings relating to the sentence and also any period during which he was, immediately prior to his first appearance in court in connection with such proceedings, in custody of the police or the Independent Commission Against Corruption, etc. AUTONUMOUT The second relevant statutory provision is section 49 of the Prison Rules, Cap 234, which provides that remission of a sentence of imprisonment may be granted to a prisoner on the ground of his industry and good conduct but that such remission shall not exceed one-third of the total of the actual term. AUTONUMOUT According to these statutory provisions, taking into account the period that the applicant had spent in custody either of the police or under the magistrate's order, assuming full remission, her discharge date for the eight months imprisonment passed by the magistrate would be 5 June 2003. AUTONUMOUT When the judge ordered eight months of the one year and eight months imprisonment passed by him on the applicant on 7 April 2003 to run concurrently with the sentences passed by the magistrate, the applicant had already served part of the eight months sentence passed by the magistrate. The judge's order of the eight months imprisonment to run concurrently with the sentences passed by the magistrate could not be fully complied with. AUTONUMOUT It is well established that the court has no power to back date a sentence, see *Fan Ah Yuk v R* [1961] HKLR 665 at 666, *AG v Wong Man Kei* [1992] 2 HKC 52 at 53F, *HKSAR v Wong To-leung*, CACC 204/2001 (20 July 2001, unreported), and *AG v Mao K Y Khoang*, Application for Review No. 4 of 1994 (21 July 1994, unreported) at p AUTONUMOUT At the time when the judge passed the sentence on 7 April 2003, taking into account the aforesaid discharge date of 5 June 2003, less than two months of the eight months imprisonment sentence passed by the magistrate remained to be served. The eight months ordered by the judge to be served concurrently could only commence on 7 April 2003, when the applicant had only two more months to remain in jail under the magistrate's sentences. AUTONUMOUT Owing to the way the judge expressed the concurrency of the eight-month imprisonment sentence, the Correctional Services Department will have to overlap that concurrent sentence with what was remained of the sentences imposed by the magistrate, and assuming full remission, the earliest discharge date would be 26 March 2004. On the other hand, if one year of the sentence imposed by the judge were made to run consecutively to the sentences imposed by the magistrate, the earliest discharge date, assuming full remission, would be 4 February 2004. The difference is 51 days longer for the applicant if the judge's order were not corrected. AUTONUMOUT The respondent fully supports interference by this Court so as to give effect to the clear and manifest intent of the judge, so that no injustice is caused. We agree. We therefore allow the application, and treating the application as the appeal proper, we allow the appeal. Without in any way disagreeing with the judge on the sentence of 1 year and 8 months imprisonment, we set it aside and substitute for it a sentence of 1 year's imprisonment to run consecutively to the sentences imposed by the

magistrate. To that extent, the appeal succeeds. (K H Woo) Justice of Appeal (Frank Stock) Justice of Appeal Mr Paul Ho, SGC of the Department of Justice, for the Respondent Ms Corinne Remedios, instructed by Director of Legal Aid, for the Applicant 1udk 1udk &`#\$ PHbn ]85 q \M68 B!B` (~g| B!B` (~g Lphr], ^ & 6" CACV Jeannie MY MokSo ABC.dot setup Microsoft Word 9.0 Judiciary CACV 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=1324

CASE PAGE <https://chat.esheria.ai/case-law/hong-kong/hksar-v-ng-kong-ling-2003>

Prepared on 29 October 2026 · Esheria