

HONG KONG / JUDGMENT

HKSAR v. NGAI KING YING

COURT

Court of First Instance

DECIDED

5 January 2010

CASE / FILE NUMBER

HCMA684/2009

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Before: The Honourable Mrs Justice V. Bokhary in Court Date of Hearing: 5 January 2010 Date of Judgment: 5 January 2010

J U D G M E N T

Notwithstanding the Appellant's bad record and the fact she committed the present offence while on probation, the probation officer has, for good reason in my view, recommended probation. The probation officer says as follows:

18. The offences committed by the Accused in the past 2 years reflected that she was in need of further professional assistance, especially the impact of the recent imprisonment, despite for 10 days, had brought a great trauma and impact on her, deepening her shame and guilt and had exacerbated her mental state. In view of her remorse and motivation to reform herself through continuous psychiatric treatment and psychological intervention, coupled with the strong support from her husband, it is deemed that the Accused is deserved to give a further chance to be rehabilitated in an open setting. Should Your Ladyship share the same view, I would like to recommend the Accused to be put on an 18-month Probation Order with the following condition: she shall be of good behaviour and keep the peace; she shall keep in touch with the probation officer in accordance with such instructions as may from time to time be given by her probation officer; and in particular, that she shall, if the probation officer so requires, receive visits from the probation officer at her home; she shall keep on attending regular psychiatric follow-up treatment and receive psychological service as directed by the probation officer; she shall participate in any social, supportive or volunteer groups or programmes as directed by her probation officer. In the light of what Lord Scott of Foscote NPJ said in *Lau Wai Wo v. HKSAR* (2003) 6 HKCFAR 624 at pp 648B-I, in relation to binding over but applicable also to probation, I do not propose to impose a

condition about being of good behaviour or about keeping the peace. If the Appellant were to offend again, she can be dealt with for the further offence or offences and also for the present offence if the further offending takes place during this probation period. After pausing long as one must before making a fresh probation order when an offence has been committed during a probation period, I will, all things considered, allow the appeal against sentence to set aside the prison term imposed on the Appellant and substitute for it an order that she be put on probation for 18 months on conditions ii), iii) and iv) recommended by the probation officer. The appeal is allowed in these terms. (V. Bokhary) Judge of the Court of First Instance High Court Mr Giles Surman, instructed by Messrs Kent Tam & Co, for the Appellant Ms Denise Chan, of the Department of Justice, for the Respondent 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 1udk 1udk i\$&H @d/Z o! @R< 5%4j 5%4j >~t6 HCMA.dot Administrator Microsoft Word 9.0 Title Microsoft Word Document MSWordDoc Word.Document.8

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