

HONG KONG / JUDGMENT

HKSAR v. OU XIAOXIA

COURT

Court of First Instance

DECIDED

18 December 2007

CASE / FILE NUMBER

HCMA1048/2007

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bjbj HCMA1048/2007 IN THE HIGH COURT OF THE HONG KONG SPECIAL ADMINISTRATIVE
REGION COURT OF FIRST INSTANCE MAGISTRACY APPEAL NO. 1048 OF 2007

BETWEEN HKSAR Respondent and OU XIAOXIA Appellant

Before: Deputy High Court Judge Geiser in Court Date of Hearing: 18 December 2007 Date of
Judgment: 18 December 2007

J U D G M E N T

The appellant, who was represented by the Duty Lawyer, pleaded guilty before Mr T S Jenkins, the principal magistrate of Shatin Magistracy, on 10 October this year to four charges, three of which were charges of making a false representation to an Immigration assistant lawfully acting under or in the execution of Part II of the Immigration Ordinance, contrary to section 42(1)(a) of the Immigration Ordinance, Cap.115 Laws of Hong Kong - that is Charges 1, 2 and 4, and one charge of using a false travel document for the purposes of Part II of the Immigration Ordinance, contrary to section 42(2)(b) of the Immigration Ordinance, Cap.115 Laws of Hong Kong. That was Charge 3. The appellant was sentenced to 12 months on each charge, but due to the question of totality of sentence, partly concurrent and consecutive sentences were ordered, coming to an overall sentence of 18 months imprisonment. The appellant now appeals against sentence on the grounds that this sentence is too heavy. In coming to my conclusions I have obviously taken into account all that the appellant has said to me this morning. The brief facts which the appellant admitted revealed that on 7 June 2004 she entered Hong Kong under the identity of Lin Chun-ping, that is Charge 1. On 6 March 2005 she entered Hong Kong once again under the identity of another person called Ou Xiaozhen, that is Charge 2. Finally, on 7 October 2007, the appellant again entered Hong Kong under this same name, this is Charge 4, and on this occasion she

presented for arrival clearance at Lok Ma Chau Control Point a Chinese permit No. W14755786 bearing the identity of Ou Xiaozhen born on 15 November 1975. That is Charge 3. Under caution, the appellant admitted that she was actually known as Ou Xiaoxia, born on 1 June 1978, and that she had obtained the Chinese permit from a middleman at a cost of 400 renminbi in 2005 in order to facilitate her entry into Hong Kong. With regard to her earlier entry to Hong Kong on 7 June 2004 under the name of Lin Chun-ping, the appellant admitted that she had obtained another Chinese permit under this name from a middleman in 2002, again at a cost of 400 renminbi. The appellant has one previous conviction for breach of condition of stay in 2004, when she was sentenced to 2 months imprisonment. By way of mitigation in the lower court, the learned magistrate was told that the appellant was married with three young children in the mainland. The reason that she came to Hong Kong the magistrate was told was to buy medicine for her mother-in-law. In his reasoned statement of findings, the learned magistrate considered the case of HKSAR v Yim Lee Kuen, HCMA1187/2002, where Deputy Judge McMahon, as he then was, considered that starting points of 18 months imprisonment were justified in offences which involve the production of false two-way permits in order to gain entry into Hong Kong. In the present case the learned magistrate correctly adopted 18 months as his starting point in relation to each of the charges that the appellant faced and reduced this to 12 months on each charge to take account of the appellant's plea of guilty. He then considered totality and was of the view that an overall sentence of 20 months imprisonment was appropriate. However, as the appellant's record of previous convictions confirmed that she had served a sentence of 2 months imprisonment already for breach of condition of stay which related to her unlawful entry on 7 June 2004, the learned magistrate decided to deduct this period of 2 months from the overall sentence of 20 months imprisonment, coming to 18 months imprisonment. In my judgment, the overall sentence imposed on the appellant of 18 months imprisonment is neither wrong nor is it manifestly excessive. However, I will give effect in this ruling to what the learned magistrate meant to do, and that is to order 12 months on Charges 1 and 2 with 3 months consecutive to Charge 1, 12 months imprisonment on Charges 3 and 4 concurrent to Charges 1 and 2, with 3 months consecutive, coming to 18 months imprisonment in all. To that very limited extent, this appeal against sentence is allowed, but only to that very limited extent. The overall sentence of 18 months remains. (S. J. Geiser) Deputy High Court Judge Representations: Miss Mickey Fung, Acting Senior Government Counsel of the Department of Justice, for the Respondent Appellant in Person PAGE - PAGE - CRT35/18.12.2007/LT HCMA1048/2007/Judgment 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 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 A B C D E F G H I J K L M N O P Q R S T U V & `#\$ Normal.dot setup Microsoft Word 9.0 judiciary Title Microsoft Word Document MSWordDoc Word.Document.8

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