

HONG KONG / JUDGMENT

HKSAR v. PAHILA, JEROME MADELO

COURT

Court of First Instance

DECIDED

23 January 2007

CASE / FILE NUMBER

HCMA1126/2006

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bjbj HCMA1126/2006 IN THE HIGH COURT OF THE HONG KONG SPECIAL ADMINISTRATIVE REGION COURT OF FIRST INSTANCE (Appellate Jurisdiction) MAGISTRACY APPEAL NO. 1126 OF 2006 (ON APPEAL FROM STCC 11325 OF 2006)

BETWEEN HKSAR Respondent and PAHILA, JEROME MADELO Appellant

Before : Hon McMahon J in Court Date of Hearing : 23 January 2007 Date of Judgment : 23 January 2007

J U D G M E N T

AUTONUMOUT The unrepresented 30 year-old appellant was convicted on his own plea of two offences of making a false representation to an immigration officer contrary to s. 42(1)(a) of the Immigration Ordinance Cap.

115. He was sentenced to 8 months imprisonment on each offence, 4 months of the terms to be served consecutively, resulting in a total sentence of 12 months imprisonment.

AUTONUMOUT He appeals that sentence as being too severe. AUTONUMOUT The facts of the case were that the appellant came to Hong Kong illegally using a false passport on two separate occasions in

2005. When he tried to enter Hong Kong using his own passport in 2006 immigration officers using various checks, including a fingerprint check, were able to determine he had twice previously entered Hong Kong using a different passport. The appellant admitted the offences when questioned about them. AUTONUMOUT An offence of making a false representation to an immigration officer by the use of a false passport is a serious matter. For each offence the magistrate took a starting point of 12 months imprisonment. In that

regard he said The offences of making false representation to immigration officers are very serious offences, and the authorities envisage a starting point ranging from 12 months to 18 months (e.g. HKSAR v. Yim Lee Kuen, HCMA1187/2002; HKSAR v. Lin Pei Luan, HCMA373/2003; and HKSAR v. Li Xiao Feng, HCMA286/2003). The offences of using travel document are considered even more serious, and the authorities envisage a starting point ranging from 18 months to 27 months (e.g. R. v. Chan Shing Leong, HCMA1149/1996 and HKSAR v. Pak Wan Lung, CACC573/1998). AUTONUMOUT In my view the magistrate s approached to the starting point of sentence for each of the present offences was lenient. AUTONUMOUT In HKSAR v. Yim Lee Yuen, HCMA1187/2002 a previous judgment of my own, it was pointed out that there was little logic in distinguishing levels of sentence for offences of using a false passport to enter Hong Kong contrary to s. 42(2) of the Ordinance and of making a false statement to an immigration officer by way of producing a false passport contrary to s. 42(1) of the Ordinance, as was the case with the present appellant. In my judgment, sentences after plea of up to 18 months imprisonment are justified in respect of both sorts of offences. By taking a starting point of sentence of 12 months imprisonment the magistrate was overly lenient with the appellant. He then gave an appropriate level of discount of a further one-third to reflect the appellant s plea of guilty. AUTONUMOUT The two offences were plainly separate offences separated by several weeks. In principle they properly were subject to consecutive sentences subject to considerations of totality. That is in fact the procedure the magistrate adopted. Given the unrepresented status of the appellant I do not intend to increase his sentence in any way, but it goes without saying that the totality of 12 months imprisonment imposed by the magistrate cannot in anyway said to be excessive and this appeal is dismissed. (M.A. McMahon) Judge of the Court of First Instance, High Court Mr Robert K.Y. Lee, SGC of the Department of Justice, for HKSAR Appellant in person PAGE - PAGE A B C D E F G H I J K L M N O P Q R S T U V 1udk 1udk H I J K L M N O P Q R S T U V & `#\$ & 6" ABC.dot setup Microsoft Word 9.0 Judiciary Title Microsoft Word Document MSWordDoc Word.Document.8

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