

HONG KONG / JUDGMENT

HKSAR v. SINGH, BIKRAM

COURT

Court of First Instance

DECIDED

14 September 2016

CASE / FILE NUMBER

HCMA297/2016

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bjbj HCMA 297/2016 IN THE HIGH COURT OF THE HONG KONG SPECIAL ADMINISTRATIVE REGION COURT OF FIRST INSTANCE MAGISTRACY APPEAL NO 297 OF 2016 (ON APPEAL FROM KCCC NO 1031 OF 2016)

BETWEEN HKSAR Respondent and SINGH, BIKRAM Appellant

Before: Deputy High Court Judge Johnny Chan in Court Date of Hearing: 14 September 2016 Date of Judgment: 14 September 2016 J U D G M E N T The appellant Mr Singh Bikram was convicted after trial of one count of possession of an identity card relating to another person contrary to Section 7A(a) of the Registration of Persons Ordinance, Cap 177, Laws of Hong Kong. On 27 April 2016, he was sentenced to 18 months imprisonment, to be served consecutively to the sentence of ESCC 1009/2016. The appellant reviewed his sentence and his review application was dismissed on 11 May 2016. The appellant appealed against both his conviction and sentence. On 31 August 2016, the appellant abandoned his appeal against conviction. Hence the appellant's appeal against conviction was dismissed upon his abandonment. This appeal only concerns the appellant's appeal against sentence. The facts as found by the magistrate reveal that on 13 March 2016, the appellant was intercepted by two police officers at 137 to 139 Shanghai Street, Yau Tei. Upon a body search, an identity card belonging to Mr Lee Kun was found in the trousers pocket of the appellant. Mr Lee left his identity card with a bag in a public toilet in Jordan on 10 March 2016. The magistrate convicted the appellant after trial. The appellant is 29 years old. He is a non-refoulement claimant. He had several criminal convictions involving theft and possession of dangerous drugs. When the appellant appeared before the magistrate, he was serving a sentence of four months imprisonment in ESCC 1009/2016, a drug-related case. In mitigation, it was submitted that the identity card in question belonged to an elderly Chinese gentleman, it was unlikely that the defendant could use the identity card to seek employment. The magistrate was urged to take it as an exceptional circumstances and pass a suspended sentence on the appellant. The magistrate considered the cases of HKSAR v Li Chang Li [2005] 1 HKLRD 864 and HKSAR v Tran Viet Thanh [2012] 1 HKLRD 903 where the Court of Appeal reiterated that the standard

sentence of possession of a false identity card or an identity card belonging to another person should be imprisonment for 12 months upon a guilty plea. The magistrate noted that the guideline of 12 months imprisonment was laid down without any qualification, the sentence was to reflect the seriousness of the offence and to serve a deterrent purpose. The magistrate noted the submissions made on behalf of the appellant that the identity card in question could not be used by the appellant to seek employment. The magistrate found, however, that there was no innocent reason why the appellant would keep the card in his possession. The magistrate took the view that the appellant must have his sinister purpose in possessing the identity card as something like an identity card could not possibly be a plaything or a collector's item. The magistrate adopted 18 months imprisonment as the starting point. As the appellant was convicted after trial, there was no mitigating factor to reduce the sentence. For the offence in question, the magistrate sentenced the appellant to 18 months imprisonment. The case of ESCC 1009/2016 was a drug case. The case concerned one charge of possession of a dangerous drug and one charge of possession of apparatus fit and intended for the injection of dangerous drugs. Apart from the fact that the appellant committed the offence in question while he was on police bail of ESCC 1009/2016, the magistrate noted that the nature of the offence, ie possession of an identity card relating to another person and the two drug-related offences were totally different. The magistrate ordered the 18 months imprisonment to be served wholly consecutive to the 4 months imprisonment in ESCC 1009/2016. The appellant was represented by counsel in the court below. He appeared in person in this appeal before me today. The appellant told me his mother, who is now in India, is not in good health. She suffers from breathing problem and she wants the appellant's company badly. The appellant urged me to reduce his sentence so that he can return to India as soon as possible. The appellant also asked me to pass a concurrent sentence for the present case and the sentence in ESCC 1009/2016. The respondent submitted in reply that the starting point of 18 months imprisonment adopted by the magistrate was correct. It does not matter whether the appellant stay in Hong Kong was legal or otherwise. As for the four months imprisonment in ESCC 1009/2016, it was within the proper range of sentences that the court could pass for drug-related offences. The magistrate was quite entitled to order the 18 months imprisonment to run wholly consecutive to the 4 months imprisonment in ESCC 1009/2016. As for the health problem of the appellant's mother, the general principle is that family difficulties is not a mitigating factor as such, which would affect what is otherwise a proper sentence. I consider the submissions made by the appellant and the reply submissions made by the respondent. In the present case, the magistrate had properly considered the tariffs as set down in HKSAR v Li Chang Li. As rightly pointed out by the magistrate, the proper sentence for possession of a false identity card or an identity card belonging to another person should be imprisonment for 12 months upon a guilty plea. The appellant was convicted after trial. It was proper for the magistrate to adopt a starting point of 18 months imprisonment as he did, and the magistrate rightly found that there was no valid reason to depart from the starting point. The appellant committed the present offence while he was on police bail of ESCC 1009/2016. The two cases were wholly distinct and separate in nature. The magistrate was right to order the 18 months imprisonment to run wholly consecutively to the 4 months imprisonment in ESCC 1009/2016. I have considered the appellant's submissions that his mother is not in good health

and want his return as soon as possible. As rightly pointed out by the respondent, the family difficulties of the appellant is not a mitigating factor which can effectively reduce what is otherwise a proper sentence. The sentence of 18 months passed on the appellant for the offence of possession of an identity card relating to another is a proper one, and the magistrate was right to order the sentence to run wholly consecutive to the 4 month s imprisonment in ESCC 1009/2016. I confirm the sentence and dismiss the appeal against sentence. (Johnny Chan) Deputy High Court Judge Mr Prakash L Daryanani, Senior Public Prosecutor of the Department of Justice, for the respondent The appellant appeared in person 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 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 hda' hda' h3`I gdhl gdhl gdhl gdhl gdQ- gdda' gdhl h3-A hXoT gdd4 gdd4 ythl gdkU gdkU gdkU gdd4 h9ie h9ie h9ie h9ie h9ie hVqL h9ie h9ie h9ie hVqL h9ie gdkU :phl ythl [Content\_Types].xml Iw}, \$yi} \_rels/.rels theme/theme/themeManager.xml K Y, sQ}# theme/theme/theme1.xml w toc'v )I` n 3Vq%`#q x}r :T'ZaG I u3 L+M2 e\O\* \$\*c? )6-r IqbJ#x ,AGm T[XF64 E)` # R>QD =(K& =al- 4vfa 0%M0 theme/theme/_rels/themeManager.xml.rels 5 6?\$Q K(M&\$R(.1 [Content_Types].xmlPK _rels/.relsPK theme/theme/themeManager.xmlPK theme/theme/theme1.xmlPK theme/theme/_rels/themeManager.xml.relsPK <?xml version="1.0" encoding="UTF-8" standalone="yes"?> <a:clrMap xmlns:a="http://schemas.openxmlformats.org/drawingml/2006/main" bg1="lt1" tx1="dk1" bg2="lt2" tx2="dk2" accent1="accent1" accent2="accent2" accent3="accent3" accent4="accent4" accent5="accent5" accent6="accent6" hlink="hlink" folHlink="folHlink"/> &tBL vZb3 2>\$g HCSD 17/2012 High Court CACC 283-2007.dot Judiciary Microsoft Office Word Judiciary Hong Kong HCSD 17/2012 Title Microsoft Office Word 97-2003 Document MSWordDoc Word.Document.8

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