

HONG KONG / JUDGMENT

HKSAR v. SINGH, JASPREET

COURT

Court of First Instance

DECIDED

13 March 2017

CASE / FILE NUMBER

HCMA52/2017

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bjbj HCMA 52/2017 IN THE HIGH COURT OF THE HONG KONG SPECIAL ADMINISTRATIVE REGION COURT OF FIRST INSTANCE MAGISTRACY APPEAL NO 52 OF 2017 (ON APPEAL FROM WKCC 57 OF 2017)

BETWEEN HKSAR Respondent SINGH, JASPREET Appellant

Before: Deputy High Court Judge V Bokhary in Court Dates of Hearing: 28 February and 10 March 2017 Date of Judgment: 13 March 2017

J U D G M E N T

The Appellant pleaded guilty in the Magistrates Court to a charge of theft, and was sentenced to 4 months imprisonment. That term of imprisonment was arrived at by way of a starting point of 6 months imprisonment which was reduced by a third for his guilty plea. He appeals against his sentence. He has not added anything to the pro forma grounds printed on his Notice of Appeal Against Sentence in Form 102. But when this appeal first came on for hearing on 28 February 2017, the Appellant raised two matters which he asked the court to take into account in his favour. I will come to those two matters in due course. The theft, which was committed at a convenience store, was of two packets of cigarettes together worth HK\$114. In arriving at a starting point of 6 months imprisonment, the Magistrate's approach was as follows. He rightly took it into account in the Appellant's favour that the property stolen was of the low value of only HK\$114. Against the Appellant, however, the Magistrate noted that the Appellant, who is in his twenties and came to Hong Kong in 2010 as a torture claimant, had a number of previous convictions in Hong Kong including six convictions for theft. His first two previous convictions were in 2013, and were not for theft. His first previous conviction for theft was in 2014. It was a case of pickpocketing. His next five previous convictions for theft were in the period from 2014 to

2016. Their circumstances were similar to those of the present offence. It was in August last year that the Appellant was released from prison after serving the sentence of imprisonment passed on him for the last of his previous offences of theft. The present offence was committed in January this year. Having noted the Appellant's criminal record, the Magistrate cited the Court of Appeal's statement in *HKSAR v Chan Pui Chi* [1999] 2 HKLRD 830 at paragraph 16 that the starting point will sometimes need to be increased to take into account the aggravating features of persistence and the failure of previous sentences to deter on the one hand, and the court's duty to protect the public on the other. The Magistrate also cited the statement in an appeal from the Magistrates Court to the High Court, namely *HKSAR v Mak Tung* HCMA 1196/2002 at paragraph 7 that in deciding whether or not to enhance a sentence on the basis of the principle expressed in *Chan Pui's* case, it is not only the quantity of previous similar offences an offender has committed, but also factors such as how similar the previous offences were and how recently those offences were committed, which fall to be considered by the sentencing court. The Magistrate then considered the circumstances and starting points in two other appeals from the Magistrates Court to the High Court, namely *HKSAR v Ng Kin Nam* HCMA 340/2001 and *HKSAR v Yuen Ching Yee* HCMA 266/2008. When an offender who has a criminal record stands before a court for sentence, he is of course to be sentenced for his present criminality, and not for his past criminality. But the circumstances can be such that the starting point to be adopted should be enhanced by reason of his criminal record because the previous sentences have not deterred him from re-offending and some severity has become obviously necessary for the protection of the public. The classic case for such enhancement is one in which there are numerous, similar and recent previous convictions. This case is precisely such a case. The Magistrate adopted the correct approach, and arrived at a starting point which cannot be said to be excessive. A full one-third discount was given for the guilty plea. I come now to the two matters which the Appellant raised when this appeal first came on for hearing on 28 February 2017. This appeal was adjourned part-heard on that day so as to enable Mr Prakash L Daryanani who appears for the Respondent to make inquiries into those two matters. The hearing of the appeal resumed on the morning of 10 March 2017, and was completed that morning. Judgment was going to be delivered that afternoon, but the Appellant became unwell and was unable to attend court that afternoon. The delivery of judgment had therefore to be postponed to this morning, the morning of 13 March 2017. One of those two matters arises out of the fact that the Appellant had been in administrative detention for 33 days during the period 10 August to 1 September 2016. He asks that that period be taken into account for the purpose of reducing the sentence which he is now appealing against. He having committed an offence while on a recognisance, the Immigration Department detained him while reviewing his conditions of recognisance. There is no good reason to take that period of administrative detention into account for the purpose of reducing the sentence which he is now appealing against. I decline to take it into account for that purpose. The other of those two matters arises out of the fact that in another case in the Magistrates Court, namely Case Number ESCC 2904/ period automatically taken into account under section 67A of the Criminal Procedure Ordinance (Cap 221). As that term of imprisonment was for less than 31 days, there was no reduction of it for good behaviour, and the Appellant served all of those 28 days imprisonment. So the period for which the Appellant had been on remand in custody pending

that case was (55) 27 days longer than the term of imprisonment eventually passed on him in that case. That 55 days of remand in custody was lawful, and it is to be noted that the Appellant could have been dealt with sooner in that case but for the fact that he had initially pleaded not guilty. As far as Mr Daryanani has been able to ascertain, those 27 extra days in custody have not been prayed in aid by the Appellant for the purpose of reducing any sentence of his on any previous occasion. Mr Daryanani adopts a neutral stance on the question of whether those 27 days should be taken into account for the purpose of reducing the sentence which the Appellant now appeals against. In all the circumstances, I consider it just to reduce the sentence by those 27 days. Without in any way faulting the Magistrate, I allow this appeal to reduce the sentence by 27 days. It appears that even if his sentence were not reduced, the Appellant would have been released 10 days from today on the 23rd of this month. If so, the result of this appeal is the Appellant s immediate release. I conclude this judgment by expressing my thanks to Mr Daryanani for his very considerable assistance in this appeal and, I would add, in all the other appeals in which he has appeared before me recently. (V Bokhary) Deputy High Court Judge Mr Prakash L Daryanani, SPP of the Department of Justice, for the respondent The appellant appeared 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 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 hkeh hkeh hkeh hkeh hkeh hkeh hkeh hkeh hkeh hkeh hkeh hkeh gdt,% gdt,% gdol gdol gdol gdt,% gdol gdt,% gdol ~qdZd hkeh hkeh hkeh hkeh hkeh hkeh hkeh hkeh hkeh hkeh hkeh hkeh gdd&j gdd&j hkeh hkeh hkeh gdd&j gdol gdol gdol |xtpxlxd hd&j hkeh ~qqq~]~g~ hkeh hkeh hkeh h~ R hd&j hd&j h`T` hd&j hd&j hkeh gdol gdd&j gdd&j gdol gdol gdol gdd&j gdd&j xkx^xO hkeh hkeh hkeh h^mB hkeh hkeh hkeh hkeh }y}y}y}yoioieQ hkeh hkeh hkeh hkeh hkeh &`#\$ gdol gdol :pd&j [Content\_Types].xml \_rels/.rels theme/theme/themeManager.xml K Y, sQ}# theme/theme/ theme1.xml \$O}) Xp90 +PHI| PP yu 9xu5 fs+W VF7H q=. 8jd- qyI@ j!Q\_ jyV` |PZ+ T ""p < 4V O&x\$ A8>v ;EUC n 8r *~P(5 .jx E /,EE} 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 H+|: Mi~. g*Tgg*Tg DCCJ643/2003 setup Normal.dotm Windows User Microsoft Office Word Judiciary Hong Kong SAR DCCJ643/2003 Title <?xml version="1.0" encoding="UTF-8" standalone="no"?><b:Sources SelectedStyle="\APASixthEditionOfficeOnline.xsl" StyleName="APA" Version="6" xmlns:b="http://schemas.openxmlformats.org/officeDocument/2006/bibliography" xmlns="http://schemas.openxmlformats.org/officeDocument/2006/bibliography"></b:Sources> <?xml version="1.0" encoding="UTF-8" standalone="no"?> <ds:datastoreItem ds:itemID="{8CCE595C-EC9B-4D11-AE6C-6F9D1357708A}" xmlns:ds="http://schemas.openxmlformats.org/officeDocument/2006/customXml"><ds:schemaRefs><ds:schemaRef ds:uri="http://schemas.openxmlformats.org/officeDocument/2006/bibliography"/></ds:schemaRefs></ds:datastoreItem> Microsoft Word 97-2003 Document MSWordDoc Word.Document.8

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