

HONG KONG / JUDGMENT

HKSAR v. SIU KAM YUNG

COURT

Court of Appeal

DECIDED

29 June 2007

CASE / FILE NUMBER

CACC512/2006

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Before : Hon Stuart-Moore VP and McMahon J in Court Date of Hearing : 29 June 2007 Date of Judgment : 29 June 2007

J U D G M E N T

McMahon J (giving the judgment of the Court) : AUTONUMOUT The 65-year old applicant was, on 24 October 2006, convicted on her own plea in the District Court by Deputy Judge Casewell of a single offence of conspiracy to steal (Charge

- 1) and seven theft offences (Charges 6, 13 15). AUTONUMOUT She was sentenced to 10 months imprisonment in respect of each of the 1st charged offence of conspiracy and the 3rd charged offence of theft, and to 6 months imprisonment for each of the remaining theft offences contained in Charges 6 and 13 15. AUTONUMOUT The judge ordered that the sentences be served partly concurrently so as to arrive at a total sentence of 32 months imprisonment. AUTONUMOUT The offences all related to the applicant s shoplifting activities. So far as the offence the subject of Charge 1 is concerned, the applicant was seen on 14 May 2006 by police on patrol in Kowloon acting suspiciously in the company of three co-accused (D2 to D4). AUTONUMOUT The police followed the four of them to the Sogo Department Store in Causeway Bay where they observed the applicant and D2 taking men s suits off a display rack and, with the assistance of D3 and D4, placing them in the plastic bags the applicant and D2 had taken out from rucksacks they were carrying. The plastic bags had the Sogo logo on them. AUTONUMOUT A store staff then approached the gang and all four then attempted to flee but were arrested by police. A search of the applicant s home was subsequently conducted and various items stolen by her on previous shoplifting excursions were found by police. She admitted her theft of those items which were the subject matter of Charges 6 and 13 15. AUTONUMOUT The applicant at the time of these offences had a bad

criminal record comprising over forty previous convictions for shoplifting between 1971 2006, and indeed Ms Anita Ma who represented her before us makes no complaint against the individual sentences imposed by the judge, or their totality. It is accepted the sentences were not excessive and that the judge made no error in principle in imposing them. The applicant simply seeks to have her sentence reduced on a humanitarian basis.

AUTONUMOUT The applicant had five children. Her youngest daughter sadly died from a long-standing illness on 1 December 2006, some 39 days after the applicant commenced serving her present sentences. She was 40 years old. Immediately following the death of her daughter, the applicant, who had previously suffered from bouts of depression, experienced those symptoms again and was initially treated at the Tuen Mun Mental Health Centre on 2 December 2006 where she was diagnosed as suffering a moderate episode of Recurrent Depressive Disorder. AUTONUMOUT That diagnosis was confirmed upon subsequent examinations of the applicant at Castle Peak Hospital, though the seriousness of this current episode of her illness was subsequently described as mild to severe . The prognosis for the applicant s illness was stated in a report of Dr Robyn Ho of Castle Peak Hospital dated 11 March 2007 as being fair . The applicant requires continual psychiatric treatment at the present time. AUTONUMOUT Whilst we have every sympathy for the applicant, we note that her daughter s illness, Systemic Lupus Erythematosus, predated the present offence and she had in fact been receiving treatment for it since

1995. Her condition had deteriorated by September 2002 to the extent that she was receiving intensive care at Queen Elizabeth Hospital. AUTONUMOUT The present offences were committed by the applicant between May 2003 and May

2006. They were committed, it is fair to say, whilst the applicant was well aware of the state of her daughter s illness. AUTONUMOUT We do not think in those circumstances the death of the applicant s daughter amounts to such an exceptional humanitarian ground so as to warrant a reduction in the applicant s sentence. Nor do we think that the current episode of the applicant s depressive disorder brought on by the death of her daughter amounts to such a ground. That illness is currently being treated whilst the applicant is in custody and is apparently being managed with some success. It has not been thought necessary to transfer her to Siu Lam Psychiatric Centre. AUTONUMOUT For the above reasons we are driven to the conclusion that the applications must be dismissed. (M. Stuart Moore) Vice-President (M.A. McMahon) Judge of the Court of First Instance Mr Prakash L. Daryanani, SGC of Department of Justice, for the Respondent Ms Anita Ma, instructed by Messrs Alvin Cheng & Rosaline Choy, as assigned by Director of Legal Aid, for the Applicant PAGE - PAGE A B C D E F G H I J K L M N O P Q R S 1udk 1udk E F G H I J K L M N O P Q R S T U V & ' \$ % &or~ Rs~/ (Q* < , DGpH ~ B; < (z&; NFaF4\ B[UN` (BQ VhrLO ,7)a~D ^|r ~ B; ,7)a NFaF (BQ B[UN D\$ti \TvV UH2 & 6" ABC.dot setup Microsoft Word 9.0 Judiciary Title Microsoft Word Document MSWordDoc Word.Document.8

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