

HONG KONG / JUDGMENT

HKSAR v. SRI WIDAYATI

COURT

Court of First Instance

DECIDED

15 December 2009

CASE / FILE NUMBER

HCMA751/2009

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bjbj HCMA751/2009 IN THE HIGH COURT OF THE HONG KONG SPECIAL ADMINISTRATIVE REGION COURT OF FIRST INSTANCE (Appellate Jurisdiction) MAGISTRACY APPEAL NO. 751 OF 2009 (ON APPEAL FROM STCC 5002 OF 2009)

BETWEEN HKSAR Respondent and SRI WIDAYATI Appellant

Before : Hon Tong J in Court Date of Hearing : 4 December 2009 Date of Judgment : 4 December 2009 Date of Handing Down Reason for Judgment : 15 December 2009

REASON FOR JUDGMENT

Background

AUTONUMOUT The appellant pleaded guilty to the following charges :

- (1) Using a false travel document for the purpose of Part II of the Immigration Ordinance (17 March 2001);
- (2) Making a false representation to an Immigration Assistant lawfully acting under or in the execution of Part II of the Immigration Ordinance (17 March 2001);
- (3) Using a false travel document for the purpose of Part II of the Immigration Ordinance (4 February 2008);
- (4) Making a false representation to an Immigration Assistant lawfully acting under or in the execution of Part II of the Immigration Ordinance (4 February 2008); and

- (5) Furnishing false particulars to registration officer (5 February 2008). AUTONUMOUT The appellant was sentenced on the same day to a total of 15 months imprisonment : (1) months imprisonment on each charge and to run concurrently; and (3) : 12 months imprisonment on each charge and to run concurrently; 9 months of such to run consecutively to Charges (2). AUTONUMOUT The appellant now appeals against sentence on the ground that the sentence was too severe. The admitted facts AUTONUMOUT The appellant admitted the following facts before the magistrate :
- (i) On 17 March 2001, the appellant used a false passport to come Hong Kong, she falsely represented herself as the bogus identity [Charges
- (1) and (2)]. She was then allowed to remain in Hong Kong as a domestic helper. (ii) She later renewed the passport and used the new one for arrival clearance in Hong Kong on 4 February 2008, [Charges
- (3) and (4)]. Again, she was allowed to remain in Hong Kong as a domestic helper. (iii) On 5 February 2008, the appellant went further to apply for a Hong Kong Identity Card, with the bogus identity. In doing so, she falsely furnished her personal particulars as those of the bogus identity [Charge (5)]. (iv) On 20 March 2009, the appellant entered into Hong Kong with the false passport [Charges
- (6) and (7)].
- (v) On 8 July 2009, the appellant surrendered to the Immigration Department for being an overstayer. (vi) The appellant had actually been arrested and repatriated to Indonesia in 1997; she used the bogus identity to conceal the record for the purpose of staying in Hong Kong to work as a domestic helper. Mitigation and sentence AUTONUMOUT The appellant was represented by duty lawyer and in his mitigation, he said that the appellant was remorseful and would like to return to Indonesia as early as possible as she was the sole breadwinner of her family. Furthermore, it was said that she had surrendered to the Immigration office voluntarily. AUTONUMOUT In this case, there was no Reason for Sentence prepared as the learned magistrate had passed away. According to the record, the magistrate was of a view that because Charges
- (1) and (2) were committed in 2001, thus the previous lower sentencing level should be adopted, but for Charges (7), the current level of sentence should apply. The magistrate rejected the appellant s claim of a voluntary surrender because she really only surrendered as an overstayer. AUTONUMOUT The appellant was not represented at the appeal hearing. She told this court that she needed to look after her family and wanted to return home earlier. Respondent s submissions AUTONUMOUT The respondent agreed that, for Charges
- (1) and (2), the sentencing practice prevailing at the time of the offence should be adopted. (See HKSAR v Xu Wupeng, unrep., HCMA492/2006.) AUTONUMOUT As for Charges (3), (4), (6) and (7), the respondent contented that a sentence of 12 months imprisonment after plea for cases of using false passport, and thus making false representation to Immigration officers,

could hardly be said to be excessive. As McMahon J commented in the case of HKSAR v Pahila [2007] 1 HKLRD 410, that sentences after plea of up to 18 months imprisonment would be justified in respect of these sorts of cases. AUTONUMOUT The respondent submitted that there was really no sentencing guideline for Charge (5). In a similar case, the appellant used a bogus identity so to gain entry into Hong Kong and extended her stay here working as a domestic helper, she had also applied for an identity card in the bogus identity; the sentence of 12 months imprisonment after plea for contravention under Reg. 19(2C) of the Registration of Persons Regulations, Cap.177 was not disturbed on appeal. (See HKSAR v Bautista Imelda V, HCMA48/2000.) AUTONUMOUT The respondent contended that the sentence for each of the charges imposed was proper and within the proper range. AUTONUMOUT The respondent also pointed out that the learned magistrate had already been lenient when he ordered the sentence for Charges

- (7) to run concurrently to each other, considering that these were separate and distinct offences. The magistrate had, obviously, also taken into account of the totality principle when he made the order for partial concurrent sentences. Result AUTONUMOUT Having considered the facts of this case and the respondent's submissions, I have to say there was nothing wrong about the sentences, they were neither manifestly excessive nor wrong in principle. Although I was sure that the appellant's only reason for committing the offences was to find work in Hong Kong to support her family, unfortunately, that was not a valid reason to reduce the sentence further. The appeal was therefore dismissed. (Louis Tong) Judge of the Court of First Instance, High Court Miss Ng Wing Hin, Hermina, PP of the Department of Justice, for the Respondent. The Appellant in person, present. 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 #(#A &`#\$ 4eg* oe/+ UE~f& 4eg* UE~f oe/+ & 6" ABC.dot Administrator Microsoft Word 9.0 .z/} Title Microsoft Word Document MSWordDoc Word.Document.8

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