

HONG KONG / JUDGMENT

HKSAR v. TAN GUIXIANG

COURT

Court of First Instance

DECIDED

12 December 2006

CASE / FILE NUMBER

HCMA1012/2006

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bjbj HCMA1012/2006 IN THE HIGH COURT OF THE HONG KONG SPECIAL ADMINISTRATIVE REGION COURT OF FIRST INSTANCE (Appellate Jurisdiction) MAGISTRACY APPEAL NO. 1012 OF 2006 (ON APPEAL FROM KCCC 5564 OF 2006)

BETWEEN HKSAR Respondent and TAN Guixiang (t sentence only. The appellant was convicted after trial before a magistrate at Kowloon City of a single offence of attempted theft and sentenced to 9 months imprisonment. AUTONUMOUT The facts of the case were that the victim of the offence and her young son were sitting eating in McDonald s Restaurant in Yaumatei when the appellant and another man sat down next to them. The appellant placed his rucksack on the bench where they were all sitting next to the victim s rucksack and sometime later the victim saw the appellant s hand inserted into her rucksack. The victim then alerted the staff of the restaurant who called the police. The appellant was arrested and subsequently charged with attempted theft. AUTONUMOUT The appellant who was unrepresented says the sentence of 9 months imprisonment is manifestly excessive. He says he has a previously clear record in Hong Kong and was visiting Hong Kong for the first time from the Mainland. AUTONUMOUT The magistrate in sentencing said This offence is akin to pickpocketing. Theft of and from handbags in crowded public places such as restaurants are extremely common in Hong Kong. AUTONUMOUT By that the magistrate obviously meant that the offence was similar in its nature to the offence of pickpocketing. In my view, that was an unobjectionable approach in the circumstances of the present case. Whether it be a pocket, a personal handbag, a money belt or a rucksack, the property primarily targeted by the thief is the same, that is, a wallet and what it contains or other items personal to the victim. On that basis, the appellant can hardly complain of the starting point of 9 months imprisonment taken by the magistrate. AUTONUMOUT The appellant also complains that the magistrate did not take into account or give any weight to his clear record in Hong Kong. The appellant was a first time visitor from the Mainland. A clear record in Hong Kong for such person can give no meaningful indication of his character and the magistrate was entitled to disregard this as a mitigating factor. There was no other matter mitigating the sentence of the appellant. The sentence of 9 months imprisonment cannot be criticized and this appeal is dismissed. (M.A. McMahon) Judge of the Court of First Instance High

Court Ms Winnie Lam, GC of the Department of Justice, for HKSAR Appellant in person, present
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