

HONG KONG / JUDGMENT

HKSAR v. TANG CHI MING, THOMAS AND ANOTHER

COURT

Court of First Instance

DECIDED

17 December 2007

CASE / FILE NUMBER

HCMA249/2007

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bjbj HCMA249/2007 IN THE HIGH COURT OF THE HONG KONG SPECIAL ADMINISTRATIVE REGION COURT OF FIRST INSTANCE (Appellate Jurisdiction) MAGISTRACY APPEAL NO. 249 OF 2007 (ON APPEAL FROM KTCC 4046 OF 2006)

BETWEEN HKSAR Respondent and TANG CHI MING, THOMAS (This is an application, arising out of the judgment I handed down a few moments ago, for a certificate for this matter to go to the Court of Final Appeal on the basis of a point of law of great and general importance having arisen. The two points that are the subject of the application are expressed as follows :

- (1) must all the factors set out in R. v. Brown (1981) 3 Cr.App.R. (S) 294 at 295 be present before a court in Hong Kong could consider an offender to be suitable for a community services order; and
- (2) if so, what would constitute remorse in the context of a convicted offender who continued to assert his innocence during the sentencing procedure. So far as this point is concerned let me immediately say that I do not see any point of law involved in respect of that point. Indeed it seems to me the question can be answered by simple common sense and I certainly will not contemplate certifying that question. AUTONUMOUT So far as the first question is concerned, I will not certify that either. It seems to me that the law has been resolved in Hong Kong in this regard and the present status of the law is that all of those matters set out in Brown, if not most of them, must be present before a community services order is thought to be suitable. AUTONUMOUT must say I am a little bit perplexed by this application because in my recent judgment it may well be that I was overly generous to the 2nd appellant in the sense that I proceeded on the basis that the particular point that Mr Lee seeks to certify did not require necessarily all factors set out in Brown to be present before a community services order could be granted. That means of course that even if Mr Lee is right in trying to have this point dealt with by the Court of Final Appeal, it may be of absolutely no use at all in so far at least my judgment is concerned because that judgment

proceeded on the basis that demonstration of remorse was not a determining factor.
AUTONUMOUT Accordingly I decline to certify the two points of law proposed. (M.A.
McMahon) Judge of the Court of First Instance, High Court Mr Jonathan T.H. Man, SGC of
the Department of Justice, for HKSAR Ms Mina W.Y. Heung, instructed by Messrs Leung &
Lien, for the 1st Appellant Mr Martin Lee, SC leading Ms Bonnie Tam, instructed by Messrs
Ho, Tse, Wai & Partners, for the 2nd Appellant PAGE - PAGE A B C D E F G H I J K L M N O P
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