

HONG KONG / JUDGMENT

HKSAR v. TANG TSZ YAN

COURT

Court of Appeal

DECIDED

9 May 2007

CASE / FILE NUMBER

CACC313/2006

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bjbj nomacro Applicant

Before: Hon Stuart-Moore VP, Stock JA and McMahon J Date of Hearing: 9 May 2007 Date of Judgment: 9 May 2007 J U D G M E N T Stuart-Moore, macrobutton nomacro VP (giving the judgment of the Court): On 14 July 2006, the applicant, aged 18, pleaded guilty before Deputy High Court Judge Wright (as he then was) to the possession of a crystalline solid containing 0.54 of a gramme of methamphetamine hydrochloride () but she pleaded not guilty to a second count alleging the trafficking in a crystalline solid containing 28.60 grammes of ice. The jury convicted her on this count and she was sentenced to 7 years and 9 months imprisonment. The judge imposed a concurrent 8-month sentence on the possession count. The applicant now seeks leave to appeal against sentence on the ground that her term of imprisonment is too long. The facts were simple. The applicant and another young woman were seen by police as they entered Room 4 on the 2nd floor of 209A Tung Choi Street. They were followed inside. The applicant was searched and a packet of ice was found in her pocket. A further thirty packets were found inside Room 4 where the applicant was an occupant. Other items, including twenty empty resealable packets, one electric scale and two bottles which contained liquid with traces of ice were also found there. The judge was presented in mitigation with a variety of factors to consider apart from the applicant s clear record. Particular emphasis was laid on the applicant s comparative youth, the absence of adequate parental guidance and the bad influence of her peers. It was said also that the ice was to be shared amongst the applicant s friends rather than to make money and it was accepted that the applicant had been addicted to ice for about a year. The bottles containing traces of ice were consistent with having been used for inhaling ice. In his sentencing remarks, the judge said: No court takes any pleasure from sending a young person to goal for a long period of time but where drugs are concerned and the potential for trafficking in them, that is a duty which the court has to discharge. You ask for mercy. Most people who are convicted of trafficking in dangerous drugs also ask for mercy. According to you, you have been addicted to this substance for a year. You know the effect it has had on you. You showed no mercy at all in having these drugs in your possession for the purposes of trafficking in them and spreading through our community the misery and hardship and heartbreak that it causes to users and their

families. In some instances people who traffic in drugs do it purely for financial reward and those people are sufficiently sensible, because they know the consequences of the use and dependency of drugs, to avoid using drugs themselves. But you are a user and have been for some while. You know the effect that making these drugs available to anyone else would have on them. I accept that there is no evidence before me as to how you were going to traffic in these drugs: you have been convicted on the basis that they were in your possession for the purpose of trafficking in them. It is sometimes said, well, this particular person was not making a financial gain out of drugs, he or she was just making them available to his friends as and when they wanted some. I would not regard anyone who makes drugs available to somebody else as being any sort of friend. (Appeal bundle pp. 36-37) In today's proceedings, the applicant expressed considerable remorse for her actions and she explained how she is attempting to rehabilitate herself so that when she is released she will be able to find a proper job and become a useful member of society. We also heard letters in support of her plea. Whilst these are, of course, matters which are to the applicant's credit, they cannot in our view affect the propriety of the sentence for a matter as grave as this. The sentence which the judge imposed was in accordance with the guidelines in *Attorney General v Ching Kwok-hung* [1991] 2 HKLR 125 and was entirely appropriate in the present circumstances. The application is dismissed. (M. Stuart-Moore) macrobutton nomacro Vice-President (Frank Stock) Justice of Appeal (M.A. McMahon) Judge of the Court of First Instance Mr Robert S K Lee, Ag. DDPP, of the Department of Justice, for the Respondent. The macrobutton nomacro Applicant, in person. PAGE - PAGE - A B C D E F G H I J K L M N O P Q 1udk 1udk 1udk J K L M N O P Q R S T U V i\$&`G Normal.dot setup Microsoft Word 9.0 Judiciary Hong Kong Title Microsoft Word Document MSWordDoc Word.Document.8

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