

HONG KONG / JUDGMENT

HKSAR v. TSO KIN HONG AND ANOTHER

COURT

Court of Appeal

DECIDED

22 November 2007

CASE / FILE NUMBER

CACC503/2006

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bjbj CACC503/2006 IN THE HIGH COURT OF THE HONG KONG SPECIAL ADMINISTRATIVE REGION COURT OF APPEAL CRIMINAL APPEAL NO. 503 OF 2006 (ON APPEAL FROM HCCC 254 AND 255 OF 2002)

BETWEEN HKSAR Respondent and TSO KIN HONG (Jile

REASONS FOR JUDGMENT

Tong J (giving the judgment of the Court) : AUTONUMOUT On 24 April 2003, the two appellants, being two members of a robbery gang, had both pleaded guilty before Jackson J to five counts of robbery and admitted the relevant facts. They were sentenced each to a total of 12 years imprisonment. They had not appealed. AUTONUMOUT In 2006, the appellants sought leave to appeal against their sentences out of time on the ground that they had rendered further assistance to the authorities in relation to another member of the gang, namely, Lui Ming (). AUTONUMOUT Having heard and considered the submissions, we granted the applications for leave to appeal against sentence out of time and the hearing of the application was treated as the hearing of the appeal. We allowed the appeal to the extent that we reduced each of the 12-year sentences by one year. Hence the sentence for each appellant was reduced to 11 years imprisonment. AUTONUMOUT We now give the reasons. AUTONUMOUT The two appellants had both admitted five counts of robbery of which they had jointly participated in four. The alleged ringleader of the group was a person called Cheng Chao Liang (Cheng) and there was another member called Lui. AUTONUMOUT In sentencing the appellants, the judge had obviously taken into account all the relevant factors, including their guilty pleas, their respective roles in the robberies and, more importantly, their assistance rendered to the authorities in connection with the prosecution of Cheng. AUTONUMOUT What had transpired was that when the appellants entered their guilty pleas before the magistrate in August and September 2002 respectively, they had, through their legal representative, indicated their willingness to testify against Cheng. They

had, by then, already given statements implicating Cheng in the robberies. Subsequently, Cheng also pleaded guilty and as a result, it was unnecessary for the prosecution to call upon the appellants to testify in court. AUTONUMOUT In passing sentence on the appellants, the judge adopted a starting point of 15 years for each of the offences. He gave the appellants the full to 12 years imprisonment. Based on this outcome, as the respondent had submitted, the notional overall starting point for all the offences would have been around 22 years and the reduction granted was a generous 46%. AUTONUMOUT Meanwhile, the police had not given up the pursuit of Lui. They later interviewed the appellants who had agreed to provide further statements and testify against Lui, if the latter could also be arrested. As it happened, in October 2006, Lui, through his legal representative, did notify the police that he would return to Hong Kong from his hiding place in the Mainland and surrender himself to the police. When asked, the appellants reiterated their willingness to assist the police. Upon the arrest of Lui, both appellants attended an identification parade where they identified Lui as a co-offender. AUTONUMOUT Lui had originally maintained his not guilty plea and gave statements to the police to the effect that he had only a limited role to play in the robberies. However, he subsequently changed his stance and decided to plead guilty. On 2 August 2007, Lui was sentenced to a term of 22 years imprisonment. AUTONUMOUT The officer-in-charge, SIP Hong, in a statement made specially for this appeal, stated that the evidence they had against Lui was not that strong, and the appellants cooperation with the prosecution must have been a material factor in persuading Lui to change his attitude. AUTONUMOUT There was no dispute that as a result of their assistance to the police, both appellants had to be transferred to the security section of Siu Lam Security Centre for their own protection. AUTONUMOUT Oderberg, for the appellants, submitted that although the time limit for the filing of the Notice of Appeal against sentence had expired a long time ago, it was clear that the grounds for the present appeal did not come into existence until the events leading to Lui s arrest and sentence had taken place. The respondent, rightly so, raised no objection on the issue and we agree that leave out of time should be granted in the circumstances. AUTONUMOUT Counsel raised the following grounds to support a further reduction of the original sentences :

- (1) the appellants have to serve their sentences in a high security facility as a result of their assistance rendered to the authorities;
- (2) the appellants conduct, in providing useful assistance to the authorities and by their willingness to testify against co-offenders, should be encouraged and rewarded; and
- (3) without the cooperation and the statements of the appellants, Lui might not have pleaded guilty. AUTONUMOUT Robert S.K. Lee, on the respondent s behalf, prepared a very thorough written submission which detailed fully the background of the present appeal. We find the information helpful. The respondent, without reservation, acknowledged that the appellants had provided useful assistance to the authorities through their statements and the actual identification of Lui. AUTONUMOUT Lee also went through a number of authorities which dealt with the principles in sentencing those who had given assistance to the police. These cases established that, subject to the circumstances of a particular case, the range of discount for someone who pleads guilty and provides assistance to the

authorities would usually be between 40% and 50% depending upon whether the prisoner had given evidence in addition to providing material assistance. Where the level of cooperation is such as to place the person in the supergrass category, a maximum discount of two-thirds would be appropriate (see R. v. Chan Fu Kui [1986] HKLR 967, HKSAR v. Lee Yat Fan, CACC414/1999, HKSAR v. Ng Shek Yu, CACC178/2000 and HKSAR v. Z [2007] 1 HKLRD 977). Rightly, it is not suggested in the present case that the appellants qualify as supergrasses. AUTONUMOUT Lee told us that while others from the gang of robbers are yet to be apprehended, the chances of finding them is somewhat unlikely. He submitted also that, whilst the appellants assistance had already been recognized by a lenient sentence of 12 years considering that their crimes involved serious armed robberies on banks, nevertheless the appellants were entitled to a further discount for their assistance in relation to Lui s case. AUTONUMOUT We have no doubt, as we have so often said, that it is most important for the courts to recognize the efforts of those who are able to provide material assistance to the police. Provided this court is not functus, it will do so even, as here, long after sentence has been imposed. AUTONUMOUT The additional discount will very much depend on the particular circumstances of each individual case. For the present case, in view of the fact that the original discount had already been a generous one, we took the view that, while a further reduction was fully justified, the overall discount should not exceed 50% of the notional starting point. Hence, we considered that a further one year s reduction would be appropriate for both appellants. AUTONUMOUT In the unlikely event that other culprits are apprehended in the future, if the appellants again provide material assistance, their proper course will then be to seek executive clemency. AUTONUMOUT In the result, for the reasons we have given, these appeals were allowed and the sentence of each appellant will be reduced from 12 years to 11 years imprisonment. (M. Stuart-Moore) Vice President (Louis Tong) Judge of the Court of First Instance Mr Lee Shiu Keung, Robert, SADPP leading Ms Cheung Kit Yee, Kathie, SGC of the Department of Justice, for the Respondent Mr K.J. Oderberg, instructed by Messrs Tang Wong & Cheung, assigned by the Director of Legal Aid, for the Appellants 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 &`#\$"@AB i\$&`G w^Ba w^Ba EvP & 6" ABC.dot setup Microsoft Word 9.0 Title Microsoft Word Document MSWordDoc Word.Document.8

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