

HONG KONG / JUDGMENT

HKSAR v. TSOGOO, Ariunsaikhan

COURT

Court of First Instance

DECIDED

8 June 2011

CASE / FILE NUMBER

HCMA332/2011

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bjbj 070)/ HCMA 332/2011 IN THE HIGH COURT OF THE HONG KONG SPECIAL ADMINISTRATIVE REGION COURT OF FIRST INSTANCE MAGISTRACY APPEAL NO. 332 OF 2011 (ON APPEAL FROM ESCC 713/2011)

BETWEEN HKSAR Respondent and TSOGOO, Ariunsaikhan (D1) Appellant

Before: Deputy High Court Judge Stuart-Moore Date of Hearing: 8 June 2011 Date of Judgment: 8 June 2011

J U D G M E N T

On 6 April 2011, the appellant, Tsogoo Ariunsaikhan, aged 17, received a sentence of 7 months imprisonment for the theft of a Blackberry mobile telephone imposed by Miss Kennis Tai sitting as a Deputy Magistrate in the Eastern Magistrates Court. The appellant now appeals against that sentence. In short, this was a pickpocketing case in which the appellant stole the telephone from a female victim who appeared to be the worse for wear from drink. The appellant was working in concert with a man (D2), to whom she passed the item which he then hid in his trousers. This all happened on 19 February 2011. The appellant, who was a visitor from Mongolia, had arrived only the day before in Hong Kong. From this, it is obvious that she is a first offender in Hong Kong. She claimed after her arrest to be very remorseful about what she had done. The Magistrate was fully aware of the principles laid down by the Court of Appeal in HKSAR v Ngo Van Huy [2005] 2 HKLRD 1 and she went on to consider also what was said by Mackintosh J in HKSAR v Nankina [2010] 3 HKC 255. This was a case not unlike the present one where a 25 year old appellant stole from an apparently drunken man who was in fact a police officer posing as a tourist who was drunk. The sentence for the theft in that case was 8 months imprisonment. The usual sentence, as a starting point after trial in pickpocketing cases, is 12 to 15 months for a first offender where

there are no factors which aggravate the offence. The Magistrate was entitled to have taken, in the particular circumstances of this case, a starting point of 12 months imprisonment. The Magistrate then discounted this for the guilty plea by a full one-third and took off a further month because the appellant had been extremely remorseful and indeed had caused injuries to herself during the period she was on remand. Ms Cecilia Chan rightly pointed out on behalf of the Respondent that, as this offence was committed by more than one offender on a victim who was vulnerable to such a crime, the starting point was already at the lowest end of the spectrum so that the sentence of 7 months was in no sense excessive. There is no merit in this appeal and it is dismissed. (M Stuart-Moore) Deputy High Court Judge Ms Cecilia S W Chan, SPP of the Department of Justice, for the Respondent The Appellant in person PAGE - 1udk 1udk h{2q O H I J K L M N O P Q R S T U V A B C D E F G H I J K L M N O P Q R S T U V [Content_Types].xml Iw}, \$yi} _rels/.rels theme/theme/themeManager.xml K Y, sQ}# theme/theme/theme1.xml w toc'v)I`n 3Vq%`#q x}r :TZaG I u3 L+M2 e\O* \$*c?)6-r IqbJ#x ,AGm T[XF64 E)` # R>QD =(K& =al- 4vfa 0%M0 theme/theme/_rels/themeManager.xml.rels 5 6?\$Q K(M&\$R(.1 [Content_Types].xmlPK _rels/.relsPK theme/theme/themeManager.xmlPK theme/theme/theme1.xmlPK theme/theme/_rels/themeManager.xml.relsPK <?xml version="1.0" encoding="UTF-8" standalone="yes"?> <a:clrMap xmlns:a="http://schemas.openxmlformats.org/drawingml/2006/main" bg1="lt1" tx1="dk1" bg2="lt2" tx2="dk2" accent1="accent1" accent2="accent2" accent3="accent3" accent4="accent4" accent5="accent5" accent6="accent6" hlink="hlink" folHlink="folHlink"/> ,wC= GEKD ,wC= setup hcma.dot setup Microsoft Office Word Judiciary Hong Kong Title []/ Microsoft Office Word 97-2003 Document MSWordDoc Word.Document.8

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