

HONG KONG / JUDGMENT

HKSAR v. TU I LANG

COURT

Court of Appeal

DECIDED

18 May 2007

CASE / FILE NUMBER

CACC464/2006

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Before : Hon Cheung JA and McMahon J in Court Date of Hearing : 18 May 2007 Date of Judgment : 18 May 2007

J U D G M E N T

McMahon J (giving the reasons for judgment of the Court) : AUTONUMOUT This is an application for leave to appeal against sentence. AUTONUMOUT The 31-year-old applicant pleaded guilty before Deputy Judge Yau (as he then was) in the District Court to an offence of using a forged credit card, contrary to section 73 of the Crimes Ordinance, Cap. 200 (the 1st Charge) and to an offence of possessing two forged credit cards, contrary to section 75(1) of the same Ordinance (the 2nd Charge). The judge adopted a starting point of sentence of four years imprisonment for each offence, reducing each sentence to 32 months imprisonment to reflect the applicant's plea of guilty. AUTONUMOUT He ordered the sentences to be served wholly concurrently. That resulted in a total sentence of 32 months imprisonment. AUTONUMOUT The facts of the case were quite straightforward. The applicant who is a Taiwanese national who arrived in Hong Kong the day before these offences attempted to purchase a mobile phone from a Fortress shop in Mongkok using a forged visa credit card (the 1st Charge). The shop assistant was suspicious of the card and called over two police officers who were in the store. They found the applicant's passport was in a name different to that upon the credit card and then searched the applicant finding another two forged visa cards on his person (the 2nd Charge). AUTONUMOUT Miss Munira Moosdeen for the applicant advances two closely particularised grounds of appeal which may be summarised as follows :

- (1) The sentences imposed for both offences were manifestly excessive.

- (2) The judge failed to take into account a number of features of the case pointing to the relatively small scale of the offences including the fact that only three forged cards were involved. AUTONUMOUT It can be seen the grounds are interconnected and they can be conveniently dealt with together. AUTONUMOUT Miss Moosdeen complains that the starting point of each sentence was too high. She points out that the applicant possessed only three forged credit cards, was not shown to have been part of a larger operation, that there was no international dimension and there was no evidence of any elaborate planning behind the offences. AUTONUMOUT It is true that in *R. v. Chan Sui To* (1996) 2 HKCLR 128 at 134, this court said in dealing with the range of sentences imposed for credit card offences in various cases cited to it: 'Allowing for the different facts and the varying degrees of culpability, it is impossible to formulate a set of principles of sentencing from those decisions. We think however it would be helpful to the courts if they were guided by some criterion. We would therefore suggest that an accused who plays an active but not necessarily a key role in a medium size operation involving between \$50,000 and \$150,000, with no elaborate planning and equipment, and without an international dimension, should receive a sentence of five to six years after trial. Sentences may be adjusted upwards or downwards according to the circumstances. It is equally true that in a number of other cases involving the simple possession or use of a small number of credit cards, this court has approved starting points of sentences of three years imprisonment, where the operation involved can be fairly described as small scale.' AUTONUMOUT In *HKSAR v. Lau Pui Hang* (unreported), CACC393/2003, this court differently constituted concluded that in circumstances such as those before it where only two credit cards were involved and the operation could be described as relatively small scale falling below the medium sized operation described in *Chan Sui To*, a starting point of three years imprisonment was appropriate: see also *HKSAR v. Watt Siu Hung*, CACC93/2001 where the offences concerned the use of two forged credit cards and the court accepted it was a relatively minor credit card fraud case, that case being approved in *HKSAR v. Cheung Ka Wo Johnny* (2002) 2 HKC
517. Small scale credit card offences cannot be subjected to strict guidelines. That is because the facts of such offences can vary significantly in a number of ways, the number of cards possessed or used being perhaps the most obvious factor. AUTONUMOUT Where the facts of the offence point to a small unsophisticated operation, involving only one or a few forged cards uncomplicated by other evidence materially linking the offender to a larger operation, then a starting point of three years imprisonment or less would be appropriate. AUTONUMOUT While some suspicion must attach to the arrival of the applicant in Hong Kong only the day before these offences were committed the facts of the present case, as accepted by the judge, reveal only a small scale operation with no international dimensions and no other aggravating factors. AUTONUMOUT In our view the appropriate starting point of sentence for each offence was three years imprisonment. That, taking into account the applicant's plea of guilty, results in a sentence of two years imprisonment for each offence. We do not propose to interfere with the judge's order that each sentence be served concurrently. AUTONUMOUT Accordingly we grant leave, treat the hearing as the appeal

and reduce the sentence imposed in respect of each offence to one of two years imprisonment to be served concurrently. AUTONUMOUT That is a total sentence of two years imprisonment and the appeal succeeds to that extent. (Peter Cheung) Justice of Appeal (M.A. McMahon) Judge of the Court of First Instance Ms Louisa Lai, SADPP of Department of Justice, for the Respondent Miss Munira Moosdeen, instructed by Messrs Paul Kwong & Co., as assigned by Director of Legal Aid, for the Applicant PAGE - PAGE A B C D E F G H I J K L M N O P Q 1udk 1udk C D E F G H I J K L M N O P Q R S T U V &`#\$ &`#\$ 4or~ Rs~/ (Q*<< ,DGpH ~ B; <(z&; NFaF4\ B[UN` (BQ VhrLO ,7)a~D ^|r ~ B; ,7)a NFaF (BQ B[UN D\$ti \TvV UH2 & 6" ABC.dot setup Microsoft Word 9.0 Judiciary Title Microsoft Word Document MSWordDoc Word.Document.8

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