

HONG KONG / JUDGMENT

HKSAR v. WONG SIU LUNG

COURT

Court of Appeal

DECIDED

7 July 2006

CASE / FILE NUMBER

CACC225/2005

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bjbj

Before: Hon Stuart-Moore VP, Stock and Yuen JJA Date of Hearing: 7 July 2006 Date of Judgment: 7 July 2006 J U D G M E N T Stuart-Moore, VP (giving the judgment of the Court): On 17 May 2005, the applicant pleaded guilty in the District Court to nine charges of theft and five charges of obtaining a pecuniary advantage by deception for which, in total, Judge Chua sentenced him on the same day to 3 years and 4 months imprisonment. The applicant then applied for leave to appeal against sentence but, on 5 August 2005, he filed a notice of abandonment in respect of those proceedings. This was followed on 7 February 2006 by an application made by the applicant to treat his previous abandonment as a nullity which was supported by an affirmation setting out his reasons for so applying. In paragraph 3 of the affirmation he stated that:

3. Due to my complete ignorance of law I abandoned my appeal application on the last occasion. I was afraid that going to court would waste the court s time. But later on, (my) friend referred me to the Bar Association and (I) wrote them a letter for assistance; this application is what they taught me to do in the reply letter. The applicant is now represented by Mr H Y Wong whose argument was that the applicant s abandonment was not an informed decision because at the time the applicant did not have professional advice . He went on in his written argument to submit that there were merits in the proposed appeal against sentence and the justice of this case does require that the abandonment should be treated as a nullity . Leaving aside entirely the fact that the sentence appears to us to have been justified on the facts, the grounds for treating the abandonment are misconceived. Plainly, the applicant was aware of the nature of the document he was signing when he abandoned his original application and was well aware of its effect. A mistake or, to take a more relevant example for present purposes, what is perceived to be a mistake, as to the prospects of success on appeal does not make the act of abandonment a nullity. (See: HKSAR v Lai Siu-cheung [2005] 1 HKLRD 1 at 11-12) There is no ground in this case to treat the abandonment as a nullity and, accordingly, this application is dismissed. (M. Stuart-Moore) Vice-President (Frank Stock) Justice of Appeal (Maria Yuen) Justice of Appeal Mr David C

Leung, SGC, of the Department of Justice, for the Respondent. Mr H Y Wong, assigned by Hong Kong Bar Association, Bar Free Legal Service Scheme, for the Applicant. PAGE - A B C D E F G 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 1udk 1udk i\$&`G HCAP.dot setup Microsoft Word 9.0 Title Microsoft Word Document MSWordDoc Word.Document.8

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