

HONG KONG / JUDGMENT

HKSAR v. X

COURT

Court of Appeal

DECIDED

5 July 2007

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bjbj IN THE HIGH COURT OF THE HONG KONG SPECIAL ADMINISTRATIVE REGION COURT OF APPEAL

BETWEEN HKSAR macrobutton nomacro Respondent macrobutton nomacro Applicant

Before: Hon macrobutton nomacro Tang VP and Fung J in Court Date of Reasons for macrobutton nomacro Judgment : 5 July 2007

macrobutton nomacro REASONS FOR macrobutton nomacro JUDGMENT

macrobutton nomacro Hon Tang VP (giving the macrobutton nomacro reasons for macrobutton nomacro judgment of the Court): The defendant was convicted on his own plea of, inter alia, one count of trafficking in a dangerous drug. He was given the usual one-third reduction for his plea. Whilst on bail, he was a paid police informer. His effort led to one conviction of bookmaking. The bookmaker was sentenced to a short term of imprisonment. The defendant was paid approximately \$3,000 in accordance with a police guideline formula under which an informer would be paid \$500:

- (a) For information leading to the arrest and charging of a person for engaging in bookmaking or assisting any person in bookmaking; (up to a maximum of \$2,000)
- (b) Additional information money based on 1% of the proven turnover of the business, subject to this information being laid before the Courts. (up to a maximum of \$10,000) It was accepted that out of the payment, the defendant had incurred some expenses. It was also accepted the defendant was not willing to testify in court. The defendant's counsel referred us to *Z v HKSAR* [2007] 2 HKC 265. There the Court of Final Appeal was concerned with pre-arrest assistance. Here we are not concerned with pre-arrest assistance. The assistance was post-arrest. However, what the Court of Final Appeal said about paid informer is relevant: (at page 273 F to H, para. 20) Secondly, the defendant may have received payment or other

consideration for his assistance. It has to be recognised that payments to police informers are a fact of life and the use of informers is necessary in society's fight against crime. Although assistance for which payment or other consideration was given may be recognised as a mitigating factor, the court should carefully consider all the circumstances in deciding whether the assistance in the case in question deserves any reduction and if so, the amount of reduction. The more substantial the payment or consideration, the less sympathetic should the court be in this regard. Counsel submitted that the payment in this case could not be regarded as substantial. However, the amount must be considered in the context of the information supplied. Here, the information related to bookmaking on soccer matches carried out in a bar, and the amount was determined in accordance with a guideline formula. In response to our inquiry we were told that the police regard the payments under the guideline formula to be adequate. That being the case, we see no reason why any reduction of sentence should be given as a further reward for such information. In *R v X* [1987] NZLR 240, the defendant was convicted on a charge of manufacturing a prohibited drug to which he had pleaded guilty. After his arrest, he provided information to the police: which enabled a person engaged in the manufacture of [a prohibited drug] to be arrested and convicted at page 246 per Bisson J. In return he was allowed to keep his car. No further discount was given to him and Somers J explained why at page 244 line 30: He struck his own bargain with the police. He traded his help for the security of his car. No consideration of fairness or justice suggests that he ought to be given any further allowance for his assistance. With respect, we agree. In the present case, we saw no reason why any further discount should be given and we had not done so when we dealt with the applicant's appeal on merit. For the protection of the defendant, he will not be identified in this judgment, nor counsel and solicitors involved. (macrobutton nomacro Robert Tang) Vice-President (B. Fung) Judge of the Court of First Instance 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 1udk 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 (#p# "0 "0 "0 i\$&`G @\$Rs setup Normal setup Microsoft Word 9.0 Judiciary Hong Kong SAR Title Microsoft Word Document MSWordDoc Word.Document.8

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