

HONG KONG / JUDGMENT

YU KWEI TIM v. HKSAR

COURT

Court of Final Appeal

DECIDED

10 October 2007

CASE / FILE NUMBER

FAMC37/2007

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bjbj FAMC No. 37 of 2007 IN THE COURT OF FINAL APPEAL OF THE HONG KONG SPECIAL ADMINISTRATIVE REGION MISCELLANEOUS PROCEEDINGS NO. 37 OF 2007 (CRIMINAL) (ON APPLICATION FOR LEAVE TO APPEAL FROM CACC NO. 87 OF 2004)

Between: YU KWEI TIM Applicant

- and - HONG KONG SPECIAL ADMINISTRATIVE REGION Respondent

Appeal Committee : Mr Justice Bokhary PJ, Mr Justice Chan PJ and Mr Justice Ribeiro PJ Date of Hearing : 10 October 2007 Date of Determination : 10 October 2007 D E T E R M I N A T I O N Mr Justice Bokhary PJ : This applicant was convicted in the High Court by a majority of 5:2 of trafficking in a dangerous drug. His conviction was affirmed by the Court of Appeal. He now seeks leave to appeal out of time in order to argue before the Court of Final Appeal that substantial and grave injustice to him was occasioned by the trial judge's direction to the jury that 4:3 is a verdict that the court cannot accept. In *Chan Kar Leung v. HKSAR*, FACC Nos. 5 & 6 of 2006, 6 November 2006, the Court was concerned with a direction, to a jury of nine, that anything less than 7:2 would not be acceptable. That appeal succeeded on other grounds, but not on the complaint against that direction. The Court said (in para.7) that there was no real danger of the jury getting the impression that they had to go on deliberating indefinitely. In *Pun Luen Pan v. HKSAR*, FAMC No. 24 of 2007, 19 September 2007, the Appeal Committee granted leave to appeal in order for that applicant to argue before the Court of Final Appeal that substantial and grave injustice to him had been occasioned by a direction to the jury that if they were locked in at four three then [they] must continue [their] discussion until [they] reach at least five two. Telling the jury that they must continue deliberating until they reach a verdict of at least 5:2 plainly goes further than merely telling them that anything less than 5:2 does not constitute an acceptable verdict. Consistently with the judgment in *Chan Kar Leung* and the determination in *Pun Luen Pan*, leave to appeal is refused in the present case. (Kemal Bokhary) (Patrick Chan) (RAV Ribeiro) Permanent Judge Permanent Judge Permanent Judge Mr Albert Luk (instructed by Messrs To,

Lam & Co. and assigned by the Legal Aid Department) for the applicant Miss Mary Sin (of the Department of Justice) for the respondent PAGE - PAGE - & `#\$ Normal.dot setup Microsoft Word 9.0 Judiciary Hong Kong Title Microsoft Word Document MSWordDoc Word.Document.8

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