CACC 101/2014

**IN THE HIGH COURT OF THE**

# **HONG KONG SPECIAL ADMINISTRATIVE REGION**

# **COURT OF APPEAL**

# CRIMINAL APPEAL NO. 101 OF 2014

# (ON APPEAL FROM DCCC NO. 860 OF 2011)

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BETWEEN

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| HKSAR | Respondent |
| and |  |
| YEUNG KA SING, CARSON(楊家誠) | Appellant |
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Before : Hon Lunn VP, Macrae and McWalters JJA in Court

Dates of Hearing : 15 May 2015

Date of Judgment : 15 May 2015

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|  | J U D G M E N T |  |
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Hon Lunn VP (giving the Judgment of the Court) :

 Having delivered our judgment refusing the appellant’s appeal against conviction on 13 May 2015, albeit that we granted him leave to appeal on several grounds, the Court fixed the adjourned hearing of the application for leave to appeal against sentence for 15 May 2015.

*Grounds of appeal against sentence*

 Perfected grounds of appeal against conviction and sentence, settled by Mr Wong Man Kit SC and Ms Amanda WM Li, were filed with the Court on 12 August 2014. Subsequently, Amended and Re-Amended Perfected grounds of appeal against conviction settled by Mr Gary Plowman SC and Derek C L Chen were filed with the Court on 14 and 27 November respectively. No further grounds of appeal against sentence were filed with the Court. Together with Ms Montgomery QC, the latter counsel represented the appellant at the hearing.

 As Mr Chan reminded us today, at the conclusion of the submissions in respect of the application for leave to appeal against conviction, in response to an enquiry by the Court as to the position taken in respect of the extant application for leave to appeal against sentence, Ms Montgomery QC informed the Court that it was not intended to pursue the grounds of appeal against sentence, unless there was a decision of the Court “that, for example only one of the allegations retained any virtue, so that the conviction actually only reflected, for example $10 million from the SJM cheques. But, otherwise we would not seek to pursue that appeal if the conviction remains intact or largely intact” .

 Today, the Court has been informed that the appellant does not pursue the grounds of appeal against sentence. That was the position to be taken by the appellant, was signalled to the Court by an attempt to file Notices of Abandonment with the Criminal Appeals Registry on 13 and 14 May 2015. However, as is made clear by rule 39 of the Criminal Appeal Rules, Cap. 221, that process is available only before the hearing. Obviously, the hearing in this matter commenced on 11 March 2015.

*Conclusion*

 In light of the position taken by the applicant today, which is entirely consistent with the approach that Ms Montgomery QC indicated would be taken on behalf of the appellant, we refuse the application for leave to appeal against sentence.

*Costs*

 At the application of the respondent, which Mr Chan was unable to oppose, we made an order of costs in favour of the respondent in respect of the application for leave to appeal against sentence, with a certificate for two counsel, to be taxed if not agreed.

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| (Michael Lunn)Vice-President | (Andrew Macrae)Justice of Appeal  | (Ian McWalters)Justice of Appeal |

Mr Anthony Chau, SPP, of the Department of Justice, for the respondent

Mr Derek C L Chan, instructed by Bough & Co., for the appellant