IN THE SUPREME COURT OF FIJI

Revisional Jurisdiction

000207

Review No. 6 of 1981

IN THE MATTER of the Criminal Procedure Code

AND IN THE MATTER of Criminal Case No. 30 of 1981 before the Magistrate's Court at Totoya, Lau

Between:

REGINAM — Complainant

and

VODO VULI — Respondent

Mr. D. Fatiaki for the Complainant
Respondent in Person

ORDER ON REVISION

The learned Magistrate who tried this case has referred it to this Court for review under the provisions of section 325 of the Criminal Procedure Code on the ground that he now felt the sentences he awarded against respondent may have been too heavy in the circumstances.

The respondent was convicted on his own plea in the Magistrate's Court in Totoya, Lau on four counts of committing acts of gross indecency with other male persons and two counts of attempting to commit same contrary to section 170 of the Penal Code and was sentenced to thirty months' imprisonment on each count to run concurrently.

The respondent was a school teacher at the Mavana District School Vanuabalavu, Lau when the offences occurred. The offences were committed with several school boys of fifteen. In the first four counts the boys were forced through fear by

the respondent to indulge in gross acts of indecency with him.

In the lower Court the learned Magistrate described the offences as revolting and repugnant and constituted a grave breach of trust by the respondent in regard to the welfare of the boys concerned. Such offences involving school boys are serious and a deterrent sentence was called for.

However, the quantum of sentence must be determined in the light of whatever mitigating features that may be present. The respondent is twenty three years of age with a hitherto clean record. His plea of guilty particularly in a case such as this must rate a strong mitigating circumstance because it spared the boys the ordeal of having to give evidence in Court. The respondent has not only lost his job but will always carry the stigma of his disgrace with him. It is also noteworthy that no violence was used by the respondent in the perpetration of these offences.

The Court below was apparently not aware that the respondent had apologised to the boys' parents and made his peace with them in the traditional Fijian way by presenting a whale's tooth to them and as far as respondent knew the matter had ended there. More than two years later and to respondent's surprise the police decided to charge him. In those circumstances the respondent may be justified in entertaining a real sense of grievance.

In the case of Mosese Uluinavitilevu v. R. (Cr.App.No.77 of 1976) where a teacher was convicted for similar offences, a sentence of eighteen months was considered quite adequate. However in that case the defendant had pleaded not guilty and there was little to mitigate his offences.

In all the circumstances therefore I think the ends of justice would be satisfied if the sentence of thirty months is set aside and one of twelve months on each count is substituted to be served concurrently. I order accordingly.

T.U. Tuivaga

(T.U. Tuivaga)
Chief Justice

Suva,
4th August 1981.