A

PETER LIMAE

v.

B **REGINAM**

[COURT OF APPEAL, 1975 (Gould V.P., Marsack J.A., Henry J.A.), 3rd, 17th March]

Criminal Jurisdiction

C *Criminal law—sentence—principles of sentencing—severity of sentence where offender has many previous convictions.*

It is a well recognised principle that a severe sentence for a trifling offence cannot be justified merely on the ground that the offender has been convicted on many previous occasions. The previous convictions should be looked at for the purpose of establishing the offender's character and assisting to determine the punishment appropriate to the case of a man of that character in relation to
D his present crime.

Cases referred to :

Willie Siu v. R. 17 F.L.R. 179.
R. v. Betteridge (1942) Cr. App. R. 171.
R. v. Casey [1931] N.Z. G.L.R. 286.
E *R. v. Pears* [1963] Crim. L.R. 448.

Appeal against a sentence of 5 years imprisonment imposed by the High Court of the Western Pacific for larceny in a dwelling-house.

H. M. Patel for the appellant.
A. I. N. Deoki for the respondent.

F Judgment of the Court (read by GOULD V.P.) : [17th March 1975]—

This is an appeal against a sentence of imprisonment for five years imposed by the High Court of the Western Pacific at Honiara in the British Solomon Islands Protectorate for the offence of larceny in a dwelling house. The appellant pleaded guilty to the charge on the 30th September 1964.

In the Protectorate the offence of stealing any chattel in a dwelling house,
G if the value of the property stolen amounts to ten dollars, is punishable with a maximum of fourteen years' imprisonment. What the appellant did was to enter the house of the complainant, during the night while the latter was asleep, and to steal a tape recorder valued at $53.40. The door of the room was open and there was accordingly no breaking.

The appellant was born in 1946, was married and had two young children.
H He has a lamentable list of convictions for larceny and kindered offences and when the learned Chief Justice passed sentence he said " This man is an incorrigible thief. It is time he was prevented from preying on the public. Short sentences have no effect on him at all as his record shows ".

Whether or not the learned Chief Justice gave too much weight to the appellant's record in imposing a sentence of five years' imprisonment is the only question in this appeal. Learned counsel urged on the appellant's behalf that in the light of his record what he required was psychiatric treatment in some form, but if this is available at all in the Protectorate the prison medical authorities could no doubt arrange for it.

Between January 1964 and February 1969 the appellant was convicted on nine counts of larceny or kindred offences and was punished by a number of short prison sentences of one month or two months. In June 1969, he received his longest sentence—one of two years' for house breaking and larceny in a dwelling house. In October 1971, he received a further year for simple larceny, followed by yet another year for criminal trespass in January 1973. Two further offences of simple larceny in March 1973, and January 1974, were punished by fines. This recent leniency appears to have had no effect.

The question of sentencing an accused person who has a long list of previous convictions is a difficult one. This court considered the problem in *Willie Siu v. Reginam* (17 F.L.R. 179). The authorities quoted in that judgment (we will not repeat all of them) indicate that while it is the practice of criminal courts generally to punish persistent offenders more severely it is a well recognised principle that a severe sentence for a trifling offence cannot be justified *merely* on the ground that the offender has had many previous convictions.

In *R. v. Betteridge* (1942) 28 Cr. App. R. 171 the Lord Chief Justice said at p. 172 :

> " We think it is not right to hold over a man's past offences, which have been dealt with by appropriate sentences, as we must assume past offences have been dealt with, and add them up and increase accordingly the severity of the sentence for a later offence. That is dangerously like punishing a man twice over for one offence. If a man who has been convicted shows himself unresponsible to leniency and persists in a life of crime, that is a reason for giving him the proper and deserved sentence in the particular case. "

In *R. v. Casey* (1931) N.Z. G.L.R. 286, Myers C.J. in giving the judgment of Court of Appeal said :

> " The court should always be careful to see that a sentence of a prisoner who has been previously convicted is not increased *merely* because of those previous convictions. If a sentence were increased *merely* on that ground it would result in the prisoner being in effect sentenced again for an offence which he had expiated . . . . . We think that the learned Solicitor-General put the matter fairly and accurately when he submitted that the previous convictions may be looked at for the purpose of establishing a prisoner's character and assisting to determine the punishment that is appropriate to the case of a man of that character for the particular offence for which he is to be sentenced. "

We think, with respect, that the matter is well put in the passage quoted from *Casey's* case ; though of course each case must be considered in the light of its own peculiar characteristics and the stage in the criminal history of the individual prisoner which has been reached.

In the present case the sentence of five years' imprisonment was undoubtedly severe, if compared with the two years' imposed for housebreaking and larceny some five years earlier. Whether the heavy punishment would have any deterrent

effect at this stage is problematical. While the appellant's crime does not fall into the category of minor offences, (the legislation having thought fit to provide for it a maximum penalty of fourteen years' imprisonment) it is not among the most serious of its kind. There was larceny of only one article, not of great value.

It would appear from the learned Chief Justice's note that uppermost in his mind in determining sentence was the protection of the public. This is a legitimate aim but the question remains whether the punishment is out of proportion to the offence itself. In *R. v. Pears* [1963] Crim. L.R. 448 (and see *Principles of Sentencing by Thomas,* p. 40) the appellant who had many previous convictions, was sentenced to three years' imprisonment for larceny of a letter containing £7. The Court said—" Three years' imprisonment for stealing £7 even granted that the public needs some protection is in the opinion of this court so out of scale with that offence that the court feels bound to reduce it ". The sentence was varied to eighteen months ' imprisonment.

We have given this case anxious consideration in the full realisation that the learned Chief Justice is so much better acquainted with the local circumstances than we can be. From our own knowledge as an appellate court we are aware that crime of this particular type is prevalent in the Protectorate. Yet we feel that, allowing for this and for considerations of public interest, the punishment is beyond the scale which is appropriate to the particular crime. We therefore allow the appeal, quash the sentence of five years' imprisonment and substitute a sentence of three years and six months' imprisonment to run from the commencement of the original sentence.

Appeal allowed to the extent of a reduction in the sentence.