IN THE SUPREME COURT OF NAURU

CRIMINAL APPEAL NO. 3/2001

BETWEEN	:	**RENOS DOWEIYA**	APPELLANT
AND	:	**DIR. OF PUBLIC PROSECUTIONS**	RESPONDENT

Date of Hearing : 8 February 2002
Date of Decision : 8 February 2002
For the Appellant : Mr. Paul Aingimea
For the Respondent: Mr. B. L. Gulati, Secretary for Justice

DECISION ON APPEAL

The Appellant appealed on the ground that the sentence imposed upon him was manifestly excessive.

He had been charged with three offences under the Criminal Code, namely, being upon a building without lawful excuse, stealing, and damaging property. He pleaded guilty to each of the three charges.

The District Court sentenced the Appellant to three months on each of the three charges, and that the sentence on the third charge should operate concurrently with that of the first charge. In effect, this amounted to a total period of six months with hard labour.

The Appellant is eighteen years of age and is a first offender. The offences were carried out with two minors aged 13 and 11. It was clearly a planned operation against a well-known business premises. Many individual items were stolen. Entry was made through the air-conditioning hole in the wall which occurred when the Appellant, a strong weightlifter, damaged and pulled out the air-conditioner in the very early hours of the morning.

In the evidence he gave on the appeal, he stated that the two young boys, one a relative and the other a friend, had asked him to help them steal from the business premises by pulling out the air-conditioner. In answer to the question whether he understood what he was doing was wrong, he said he knew that but he just wanted to help them.

In submitting that the sentence was manifestly excessive, Mr. Aingimea for the Appellant compared his case with that of ***Keitsito, Criminal Appeal No. 2/2002*** where a sentence of one month was imposed on each of two charges which were to be served concurrently. The facts, Mr. Aingimea said, bore similarity. He also emphasized the Appellant's comparative youth, his present unemployment and family situation, his present weightlifting prowess and training, and made comparison with a

number of cases where sentences were imposed over the past three or four years. Mr. Kun, a well-respected member of Nauruan society and an official of the weightlifting federation gave character evidence in support of the Appellant.

There was in this act some degree of pre-meditation which was not all to be attributed to the two very young boys. Furthermore, it was up to the Appellant to ensure that the younger boys be not easily led astray. To fall into their plans, if it be the case as described, was reprehensible in itself. Civil society can only operate satisfactorily and people live in harmony one with another where there is respect for law and for other peoples rights and property. Morality, not just law, must be understood and enforced.

In recent times, there have been too great a number of ill-considered wrongful acts undertaken by the young in Nauru which is noticeably building up in the court lists. Until a much more satisfactorily developed and supervised Community Service scheme is adopted where custodial supervision is constantly exercised, then there is little that the Court can do other than impose custodial sentences on those other than minors. The Court would, therefore, welcome attention being paid by the authorities to

implementing the provisions of the Criminal Justice Act 1999 enabling properly devised, controlled and supervised sentencing of community service groups. At the moment, that is not open to me here.

In regard to the Appellant, he pleaded guilty to three charges. It was a planned attack on a business premises that involved a breaking-in. A custodial sentence, in the circumstances of this case, was entirely warranted. The case has its measure of difference with that of Keitsito. There were three charges, and the manner of the break-in on a commercial premises was significant. It must be brought home to all that such activity must be deterred in society and the Court ultimately must deliver such a message. The Court does not propose to disturb the sentence imposed as it is not manifestly excessive but will make all the sentences concurrent.

I therefore **ORDER** –

1. The sentences imposed on the Appellant are quashed.

2. In substitution, the sentence imposed on Count 1, be three months, Count 2, be three months, and Count 3, be three months.

3. The sentences imposed on each of Counts 1, 2 and 3 to be served concurrently.

BARRY CONNELL
CHIEF JUSTICE