IGNACIO CELIS, and DOROTHEO AGUON, Appellants

v.

TRUST TERRITORY OF THE PACIFIC ISLANDS, Appellee

Criminal Case No. 208

Trial Division of the High Court

Mariana Islands District

January 12, 1967

Defendants were convicted in Mariana Islands District Court of petit larceny in violation of T.T.C., Sec. 397. On appeal, defendants contend they were misled into pleading guilty by complaining witness who had forgiven them and to whom they had made restitution. The Trial Division of the High Court, Chief Justice E. P. Furber, held that decision to prosecute is in discretion of government; that restitution is matter to be considered by court in connection with sentence; but that court had no discretion to treat fifteen-year-old offender as adult.

Modified and remanded.

1. Criminal Law-Discretion to Prosecute

   Under present state of Trust Territory law, decision of whether government should go ahead with prosecution contrary to wishes of complaining witness or injured party is left to discretion of prosecuting officials.

2. Criminal Law-Discretion to Prosecute

   Courts have no right to interfere with prosecutor's decision to go ahead with prosecution, although consent of court is necessary for dismissal.

3. Criminal Law-Discretion to Prosecute

   Relief from situation where criminal defendant has made restitution and complaining witness has forgiven defendant must depend on action by either executive or legislative branch of government and is beyond sphere of courts under present state of law.

4. Criminal Law-Sentence-Restitution

   Restitution is matter which courts can properly consider in connection with matter of sentence in criminal cases.

5. Larceny-Petit-Sentence

   In conviction for petit larceny, where one defendant is fifteen years old and other defendant has made restitution, and neither has previous criminal record, sentences of four months imprisonment with all except first two and one half months suspended, are high. (T.T.C., Sec. 397)

6. Criminal Law-Sentence

   It is highly improper in sentencing accused in criminal case on plea of guilty to one crime to consider possibility he may have committed some

other more serious crime with which he has not been charged and against which he has had no opportunity to defend himself.

7. Larceny-Petit-Age

Fifteen-year-old defendant is competent under Trust Territory law so far as age is concerned to commit crime of petit larceny. (T.T.C., Sec. 432)

8. Criminal Law-Juveniles

Fifteen-year-old defendant in criminal case has absolute right to be tried with protections accorded juvenile offender. (T.T.C., Sec. 495)

9. Criminal Law-Juveniles

Court in criminal proceedings has discretion to treat offender sixteen years of age or over in all respects as adult if in opinion of court his physical and mental maturity so justifies, but court has no such discretion as to fifteen-year-old offender. (T.T.C., Sec. 495)

10. Criminal Law-Juveniles

Fact that juvenile delinquency is definite problem in place where criminal offense arose should not lead to disregard of clear provisions of Trust Territory law regarding juvenile offenders.

11. Criminal Law-Juveniles

Trust Territory law provisions as to juvenile offenders contemplates importance of trying to secure cooperation of parents or guardians in helping rehabilitate minors. (T.T.C., Sec. 495)

12. Criminal Law-Sentence

Where criminal case is remanded for further proceedings as to fifteen-year-old defendant, he should receive credit for eighteen days of sentence already served before sentence was stayed pending appeal in any future action taken as to him.

Assessor: JUDGE ELIAS P. SABLAN
Counsel for Appellants: WILLIAM B. NABORS, ESQUIRE
Counsel for Appellee: JOSE P. MAFNAS

FURBER, *Chief Justice*

This is an appeal from convictions of petit larceny under Trust Territory Code, Section 397. In the District Court there were three accused, of whom only the two shown above have appealed.

The following stipulations supplementing the record were entered into by counsel:-

(1) Before the trial in the District Court, the complaining witness, Jose Q. Lizama, notified the Prosecutor, Jose P. Mafnas, that the accused Celis had paid restitution and that he, Mr. Lizama, therefore did not wish to prosecute Mr. Celis, and the fact that Mr. Celis had made some restitution was reported to the court after the finding of guilty and before sentence was imposed.

(2) The accused Aguon was tried in open court with the other two accused.

(3) Neither appellant has any previous criminal record.

Counsel for the appellants argued two grounds of appeal:—

(1) That the appellants had been misled into waiving counsel and pleading guilty, by the complaining witness having told them they would be forgiven if they made restitution so that they had not expected any jail sentences and had appeared without the assistance of any relative, that such an arrangement was in accord with local custom, and that the prosecution, at least in the case of the accused Celis, should have moved for a dismissal or taken some equivalent action, and

(2) That the sentences were excessive for such young first offenders.

Counsel for the appellee argued that the crime in question was against the public, that the Government had a duty to prosecute such offenses, that the complaining witness was not entitled to control the situation, and that restitution was something the accused should make anyway and did not wipe out the crime. In answer to an inquiry from the court, he stated that the accused Aguon was not tried in accordance with the procedure specified in Trust Territory Code, Section 495, concerning juvenile offenders because, in the opinion of the District Court, his physical and mental maturity justified his be-

ing tried as an adult. On the question of sentence, counsel for the appellee argued that the sentences were justified because this was an aggravated offense and the charge might have been burglary.

OPINION

[1,2] Under the present state of the Trust Territory law, the decision of whether the Government should go ahead with a prosecution contrary to the wishes of the complaining witness or party primarily injured is left to the discretion of the prosecuting officials and the courts have no clear right to interfere with a prosecutor's decision to go ahead with the prosecution, although the court's consent is necessary for a dismissal. This is a situation in which there is a strong difference of opinion as to what public policy requires. Many brought up in the English-American common law tradition look with disfavor on such arrangements as the complaining witness is alleged to have entered into here (and as the second stipu1ation above indicates as to the accused Celis), such an arrangement having been considered at common law as itself constituting a crime-namely, that of compounding either a felony or a misdemeanor as the case might be. See Bouvier's Law Dictionary, Third Revision, Vol. 1, p. 573, Compounding a Felony, at p. 574 as to Misdemeanors. On the other hand, many who have been brought up in jurisdictions following the civil law tradition consider that such arrangements are highly desirable, lead to peace and quiet in the community, and promote justice in the long run. Thus, in areas with such background, even after they have some under the jurisdiction of the United States,. express statutory provisions may be found for the compromise of certain misdemeanors with the approval of the court, even over the objection of the prosecution. See Penal Code of Guam (1953) Secs. 1377 and 1378, and Canal Zone Code, Title 6, Secs. 4821-4823 inclusive.

This matter of proceeding against the wishes of the complaining witness or party primarily injured is clearly contraty to the views of many leaders in Micronesia-even as applied in some felonies-and appears to have seriously discouraged public cooperation with the law enforcement. authorities in some instances. As a result, in 1953 to 1954, the Chief Justice and the then Associate Justice, the then District Attorney, the then Public Defender, and the then Attorney General, with the assistance of the then Staff Anthropologist, worked out a statement of "Suggested Policy as to Criminal Prosecutions for Those Crimes Involving Primarily a Wrong to a Particular Individual or Individuals", in which it was hoped that both the. courts and the executive branch of the government could concur. This was developed with the assistance of the Trust Territory Anthropologists Conference in Ponape in 1953. Succeeding District Attorneys have somewhat grudgingly or hesitatingly gone along with this suggested policy-'at least as to first or second offenders-but it has never been issued or formally approved by or on behalf of any High Commissioner. Obviously it has not effectively reached all the District Prosecutors.

This suggested policy and the possibility of recommending legislation along the lines of the provisions of the Penal Code of Guam cited above were considered at some length at the 1962 Trust Territory Judicial Conference, but divergence of opinion was' expressed and no resolution was adopted on the subject.

[3] It is therefore believed that any relief from the situation brought out by the appellants' counsel in arguing their first ground of appeal must depend on action by either the executive or the legislative branch of the government and is beyond the sphere of the courts under the present state of the law.

[4-6] Restitution is, however, a matter which the courts can properly consider in connection with the mat. tel' of sentence and it does seem to this court that the sentences of four months' imprisonment, with all except the first two-and-a-half months suspended, which were imposed on each of these appellants, are surprisingly high, particularly in view of the fact that the accused Celis had made restitution and the accused Aguon was only fifteen years old, and neither had any previous criminal record. The court is also disturbed by the counsel for the appellee's allegation that the charge here might have been burglary and his clear intimation that on that account, heavy sentences should be imposed. There is no charge or suggestion of burglary in the complaint to which these two accused pled guilty, and this court is strongly of the opinion that it is highly improper, in sentencing an accused on a plea of guilty to one crime, to consider the possibility that he may have committed some other far more serious crime with which he has not been charged and against which he has had no opportunity to defend himself.

[7-12] The record shows that the accused Aguon was, as mentioned above, only fifteen years old. While he was therefore competent under Section 432 of the Trust Territory Code, so far as his age is concerned, to commit the crime of petit larceny, he had an absolute right to be tried with the protections accorded a juvenile offender by Section 495 of the Code. That section gives a court discretion only to treat "an offender sixteen years of age or over" in all respects as an adult if, in the opinion of the court, his physical and mental maturity so justifies, but allows the court no such discretion as to a fifteen-year-old. It is recognized that juvenile delinquency is a definite problem on Saipan where this case arose and that this fact may have influenced the trial court, but such a con-

sideration should not lead to a disregard of the clear provisions of the Code. Furthermore, the great importance and practical advantage of trying to secure the cooperation of parents or guardians in helping to rehabilitate a minor, as contemplated by Section 495, should not be overlooked. It may be that it would even be in the long-run public interest to have this appellant charged with juvenile delinquency as permitted by Section 432, rather than with the crime of petit larceny. In whatever future action is taken as to him, however, care should be taken to give him credit for the eighteen days of his sentence which he had already served before the sentence was stayed pending appeal.

JUDGMENT

In Mariana Islands District Court's Criminal Case No. 143-66:-

(1) The finding as to the appellant Celis is affirmed, but his sentence is changed to two (2) months' imprisonment, with all except the first month suspended; and

(2) The finding and sentence as to the appellant Aguon are set aside and the case as to him remanded to the District Court for new trial or other proceedings in accordance with Section 495 of the Trust Territory Code.