S/1

NO. 140

HAU KOAVA.

REASONS FOR JUDGMENT.

This is an Appeal against the imposition of a sentence of two months' imprisonment with hard labour in relation to a conviction for drinking intoxicating liquor, the Appellant being a native. The Appellant pleaded guilty to the charge and a conviction and sentence were recorded on 10th April, 1959 at Port Moresby. The Appeal is against sentence only, and Counsel for the Appellant has relied strongly upon the fact that the Appellant is a first offender and should not have to bear the full weight of a sentence imposed for the purpose of deterring others from committing the same offence, particularly having regard to the fact that the offence is a persistent one and a deterrent penalty tends to be rather high.

The learned Magistrate has stated clearly in his reasons the footing upon which the sentence was assessed. It was accepted that the Appellant had a good record and had reached a considerable state of advancement to the extent of holding regular employment involving some degree of skill. These circumstances do not appear, however, to have assisted the Appellant. The Appellant was found in an extreme state of intoxication and the learned Magistrate noted that he resisted arrest. It appears that the Appellant was in a rather helpless state and was very sick, and although he made a great nuisance of himself, I do not think that it was suggested that he was violent in the sense that any person or property was endangered, or that the use of alcohol was in this case directed towards any ulterior purpose.

Considering all the facts, the learned Magistrate came to the conclusion that he could perceive no reason which would place this Defendant in a separate category from any other first offender against this particular offence. Then the learned Magistrate sets out a table showing the number of convictions for similar offences over a period of nine months, from which it appears that prior to September, 1958 the Court was in the habit of imposing a standard penalty of one month's imprisonment and that after that time the penalty was

increased to two months. This increase appears on the figures to have produced a decrease in the number of offences until in early 1959 the number of convictions fell to one or two per month. From a period of 3rd April to 7th April it appears that there were six convictions, but in my view no inference can be drawn from this fact. It seems to me that the figures set out in the table are not sufficient to establish reliable averages. The table indicates when the convictions took place without any reference to the date of the commission of the offences. The fact that six people happened to be convicted in early April does not indicate anything significant nor does it appear to indicate an increase in the rate of commission of these offences, having regard to the July to September, 1958 figures.

I appreciate the way in which the learned Magistrate is endeavouring to assess the rate of commission of offences of this kind; (which carry serious social implications) and I trust that when his statistical records extend over a longer period of time so as to provide a more reliable guide as to the elements leading to the commission of these offences rather than merely the recording of convictions, it will be possible to draw valid statistical conclusions.

At the present time, however, I think that it is likely to produce undue severity if the practice is established of imposing on all first offenders the same standard rate of punishment based on the current average of total convictions.

I appreciate that in many instances where minor offences are prevalent, for example, in the case of traffic offences in large communities, and where penalties are assessed by the hundred, it becomes inevitable that the statistical approach to the question should be adopted and that little consideration can be given to the facts of the individual case. However, I think that this is only permissible in cases of minor offences of a recurrent nature and in cases where the legislature has indicated the intention that the punishment should be standardised in this way. In the present case the Appellant has reached a fairly advanced state of social development, for he relies substantially upon his pecuniary earnings as a semi-skilled employee, and I think that the hardship in sending him to gaol for two months is precisely the same as in the case of a European who is dependent for his livelihood upon his employment. Similar hardship does not arise in all cases.

The fact that the Ordinance provides for a maximum sentence of six months indicates that it is to be regarded as a substantial offence, and prima facie I would not regard two

months' imprisonment as unduly severe for a first offence, but having regard to the situation of the Appellant, I think that there is reason for thinking that a smaller punishment would suffice.

It is not the function of the Courts to punish people for the offences they commit. That function has long been assumed by the legislature which has specified what it regards as the appropriate maximum penalty. It is therefore the function of the Court to decide how much of this maximum penalty is appropriate to the particular case and this involves two main considerations; first, the circumstances applicable to the accused as an individual who has to suffer the punishment, and second, the element of public interest in deterring crime and maintaining law and order. Particularly in the case of a first offender, the first element is no less important than the second, but in the case of repeated offences, the second element naturally tends to carry much more weight.

I think in this case justice would be done if I followed the course adopted by the learned Magistrate in another case last month and imposed a fine. I do not know what fine was imposed in that case, but having some regard to the provisions of Section 156 of the Justices Ordinance (which provisions seem to be very much out of date although they are the latest expression of the will of the legislature available for the guidance of the Courts), I think that a fine of £7. would be appropriate. I do this with a good deal of hesitation, because I think that it is clear that the learned Magistrate is in a much better position than I am to decide from his experience whether the imposition of fines in the case of first offenders is going to produce any useful result. I do not therefore want to be taken as saying that all first offenders should be given the option of paying a fine, but I am taking this course in the present case in the hope that it may afford the Appellant the opportunity to maintain his present employment and advance further. I should warn him, however, that if the fine does not sufficiently impress him as a deterrent in the present case, he should expect to be much more firmly dealt with should he be convicted again for a similar offence. Section 143 of the Justices Ordinance appears to require that in default of payment of the fine the amounts mentioned in the Section are to be levied by warrant of execution. Accordingly I further order in terms of Section 146 that in default of sufficient distress the Appellant is to be imprisoned for a period of one month with hard labour.

C.J.

14/5/59.