

Appeal from District Court at Lae.

BRUCE RAY OVERBECK

Appellant

-v-

DRYAN ALAN BEATTIE

Respondent.

J U D G M E N T.

The Appeal was heard on 5th May, 1960 by the Chief Justice, and disallowed. The Reasons were given orally and not recorded at the time. The following is an approximate statement of the Reasons given when the Appeal was dismissed.

The Appeal is against the sentence of three months' imprisonment imposed by the learned Magistrate.

On the original hearing the Appellant denied committing the offence, but after close consideration of all the evidence, the Magistrate rejected his evidence and convicted the Appellant. I must approach the Appeal on the footing that the Appellant has committed the offence and knew at the time in question that he was doing so.

The Appellant asks for a fine to be imposed, and referred to a recent case (I believe in Daru) where a Magistrate imposed a fine of £10. or thereabouts for supplying a very large quantity of wine to a native. The Appellant says that this is the first time that he has been in trouble in the eight years which he has spent in the Islands, and that he was on Active Service with the Eighth Division during the War. He has now lost his employment because of this conviction, has lost his leave pay, and estimates his financial losses at about £400. I do not doubt that consequential losses of this character have been heavy, but they should not be taken into account as a substitute for the punishment prescribed under the Ordinance for committing the offence. I would give the Appellant full credit for his past good record if I thought that the Magistrate had not adequately done so. The real

question is - what is the view expressed by the legislature as to the kind of punishment which one must expect for committing this offence.

The Appellant gave the liquor to a native friend of his and did not seek to profit in any way from the transaction. I do not know what the drink cost him exactly, but he probably made a small loss.

Turning to Section 5 of the Liquor (Natives) Ordinance, 1953 to 1958, the maximum punishment is imprisonment for one year. Prior to that Ordinance, the corresponding provision appeared in the Arms, Liquor and Opium Prohibition (New Guinea) Ordinance 1950 to 1952. There the punishment for the corresponding offence was twelve months' imprisonment or a fine of £200. This alternative provision for a fine was removed in the 1953 Ordinance, and the only inference which the Court can draw is that the legislature intended that the normal penalty for this kind of offence should consist of imprisonment alone.

The reason for this "hardening" of the legislative policy is not difficult to see. Many people would be prepared to provide some natives with alcohol according to their own personal views on a highly controversial question. Many of them would continue to do so if the punishment for the offence was small. It is obvious that if any liquor is to be supplied to any native, there is an immediate risk of consequences which will get out of control, and it is the responsibility of the legislature - not of the Court - to decide what those consequences might be. The legislature has said in effect that this is to be a serious offence and that people who offend cannot have any right to expect a fine as an alternative punishment.

The learned Magistrate, in his Reasons, has I think correctly applied his mind to these considerations and has imposed a sentence of imprisonment which I think is moderate and quite suitable for a first offender, having regard to the clearly indicated policy of the Ordinance.

There is one possible alternative which explains the case in which a Magistrate did impose a small fine. Under Section 207(2) of the District Courts (New Guinea) Ordinance the Court is given a very special power: if it thinks that the justice of the case will be better met by a fine than by imprisonment, to impose a fine not exceeding £25, subject to certain conditions. This special power applies to any case where another Ordinance provides for imprisonment but gives the Court no authority to impose a fine. I think

the Section is applicable to the present Ordinance, subject to this consideration - that the maximum fine which may be imposed is £25.

According to my recollections of the case at Daru, the Magistrate accepted the statement made by the offender to the effect that he acted in good faith and genuinely believed that the person to whom he supplied the large quantity of wine was entitled by law to have it supplied to him. I think the Magistrate in those circumstances quite properly considered that a fine of £10. imposed under Section 207 would meet the justice of the case.

I think there are no circumstances in the present case which would warrant my resorting to this special power and imposing a fine not exceeding £25. in lieu of the term of imprisonment.

In the present case it is not open to me, on the learned Magistrate's findings of fact, to take the same view as was taken in the Daru case.

According to the scale set out in Section 203 a fine of £25. would approximately represent a period of imprisonment for three months. The maximum term of imprisonment provided under the Liquor (Natives) Ordinance at one year might be taken as being roughly the equivalent of a fine of £100. If there was anything in the District Courts Ordinance authorising me to impose a fine of substantially more than £25., I might have been prepared to give this possibility further consideration. The figures set out in the District Courts Ordinance are clearly out of date, but they are in force, and I have no other power to impose a fine.

I would have been prepared to consider releasing the Appellant upon payment of a fine after he had served something like half the term of imprisonment imposed, if this course had been open to me. However, I think it is clear that I have no such power.

In the circumstances of this case and on the findings of the learned Magistrate I can see no reason for arriving at a different conclusion from his, or interfering with the punishment which he has imposed.

CHIEF JUSTICE.

5/5/60.

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