

IN THE SUPREME COURT }
OF THE TERRITORY OF }
PAPUA AND NEW GUINEA }

CORAM: PRENTICE, J.
Tuesday,
31st August, 1971.

BETWEEN: NAIME VADE
Appellant
AND: A.W. STUCKEY
Respondent

Appeals No'd. 53-59 inclusive of 1971 (P)

1971
Aug 16
and 31
PORT
MORESBY
Prentice,
J.

These seven appeals were heard together before me. On 5th May, 1971 the appellant had pleaded guilty in the Children's Court, Port Moresby to seven offences, and was sentenced to six months imprisonment with hard labour on each. The sentences were made cumulative so that the appellant was required to serve three and a half years imprisonment. The appellant is some 15 or 16 years old. All the offences were allegedly committed between the 19th and 27th March, 1971.

No notice of ground of appeal appears in the files but I am informed by counsel that the sole ground taken was that of severity and an additional ground was by leave, added to appeals 56, 57, 58 and 59, namely that pleas of guilty had been improperly induced by the threats and promises of Constable Weho of the C.I.B. The appellant's affidavit and oral evidence was received and thereafter Inspector Stuckey and Constable Weho gave evidence. On 20th August I dismissed the second ground of appeal in those numbered 56 - 59 inclusive. It remains to deal with the question of severity in all seven appeals.

The appellant had been previously in trouble in 1969 and in February, 1971. On the latter occasion he was declared uncontrollable and committed to the care of the Director for four years. The learned Magistrate's understandable frustration at finding the appellant committing another seven of break and enter type offences the very next month appears to be reflected in the punishments he imposed. The declaration had been made in respect of serious break and enter offences at Dr. Hutchinson's and Boroko Squash Courts.

As I stated in the appeals earlier in August, 1971 of Elavera and ten others, I propose to

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follow my brother Raine's decision in Passingan v. Beaton (1) which seems to me with respect to collate the authorities and correctly to state the law in regard to cumulative punishments.

I have regard to the appellant's age and the fact that these offences occurred in a burst of group behaviour. I have regard to the fact that they are each not, I consider, of the worst kind in their category of offences; and to the totality of the sentences. I consider them crushing and manifestly excessive.

But in view of the fact that these seven offences were committed so soon after the Magistrate's salutary warning in February, it seems to me that an addition to what would perhaps normally be a sufficiency of cumulative sentences, namely two; might be imposed.

I allow all the appeals and make the following substituted orders: -

Appeal 53. In respect of the break and enter the Town Shop with intent, I confirm the conviction and substitute a sentence of four months imprisonment with hard labour.

Appeal 54. In respect to the break, enter and steal from Waigani Cash and Carry, I confirm the conviction and substitute a sentence of five months imprisonment with hard labour, which I direct be cumulative on that of four months in respect of the Town Shop offence (Appeal 53).

Appeal 55. In respect of the illegally using a Datsun car, I confirm the conviction and substitute a sentence of two months imprisonment with hard labour to be served concurrently with the four months for the Town Shop offence (Appeal 53).

Appeal 56. In respect of break, enter and steal from Papuan Mini Mart, I confirm the conviction and substitute a sentence of four months imprisonment with hard labour and I direct this be cumulative on the sentence of four months in respect of the Town Shop offence (Appeal 53).

Appeal 57. In respect of break and enter National Bank with intent, I confirm the conviction and substitute a sentence of four months imprisonment with hard labour to be concurrent with that for the Town Shop offence (Appeal 53).

Appeal 58. In respect of break, enter and steal from Chapman's Pharmacy, I confirm the conviction and substitute a sentence of three months imprisonment to be served concurrently with that for the Town Shop offence (Appeal 53).

Appeal 59. In respect of the break and enter Tutt Bryants with intent, I confirm the conviction and substitute a sentence of five months imprisonment with hard labour to be cumulative upon that for the Town Shop offence (Appeal 53).

To the intent that the appellant should serve in all eighteen months imprisonment with hard labour.

I recommend that on the conclusion of his sentence the appellant be placed by the Director in the care of his uncle Lohia Vaheki, a fork lift operator, of Hanuabada on the condition that he accept the direction of his said uncle, and I recommend that his wardship be extended by the Director until he attains 21 years of age.

I should warn the appellant that if he offends again he will undoubtedly be charged before the Supreme Court and can expect far more severe punishment than he has obtained to date.

Solicitor for the Appellant : W.A. Lalor, Public
Solicitor
Solicitor for the Respondent: P.J. Clay, Crown
Solicitor