

IRO -v- REGINAM

High Court of Solomon Islands

(Ward C.J.)

Criminal Case No. 15 of 1990

Hearing: 31 July 1990

Judgment: 23 August 1990

M. Bird for the Appellant

F. Mwanosalua for the Respondent

WARD CJ: The appellant was sentenced on 1 March 1990 for two offences of drunk and disorderly, and one each of using insulting and abusive words, malicious damage and resisting arrest. He had previous convictions for similar offences. The offences for which he was sentenced on 1st March were for two separate incidents. He had been bailed for the first despite the breach of an earlier residence order and failed to appear. The second offences were committed after that.

The learned principal magistrate sentenced him to imprisonment and made a residence order for 12 months to his village on Malaita.

The appeal is on the single ground that the residence order ought not to have been made.

This court has heard evidence from the appellant and his father to the effect that the appellant was born in Honiara and has lived here all his life. He explained he had been subject to a residence order last year but when he got to the village there was no one there to look after him. After two days he returned to Honiara and, when seen by the police, he gave the untrue reason that his father was sick. He was sentenced to 7 days imprisonment for the breach and then

returned to Malaita. He returned to Honiara again after one day.

On questioning it appears the situation is not quite as he claimed. By the custom of his village, as a blood relative, he will always be allowed to stay and will be looked after. In the village is an elderly sister of his mother. The appellant stated she was too old to work in the garden and therefore could not feed him but, when asked if he had worked in the garden for her, he had not.

The Penal Code gives little guidance on the manner on which residence orders are to be used save to say that a convicted person may be conveyed to "his place or district of origin ..... or the place or district in which he is ordinarily resident." That provision allows two possibilities both of which are intended to remove him from the place in which he has offended. Residence orders are an additional penalty for offences of an antisocial nature such as this man has committed more than once.

In a case such as this where the convicted man has not lived in his place of origin, he should tell the magistrate and that should be considered. Mrs Bird agrees that the appellant never told the court on any occasion although the appellant says he did. The learned principal magistrate was right to regard Loina village as this man's place of origin. Clearly that phrase means more than the subsequent expression of ordinary residence and it has not been suggested otherwise in the appeal.

Mrs Bird bases her appeal on the fact that, because the links have been broken and because of the lack of close relatives, such a penalty was inappropriate and unnecessarily harsh. I accept that, in this case, it may be a harder penalty than it would be for many other offenders and such a matter should be brought to the attention of the court for

consideration. However, having said that, I see no reason why I should interfere in this case.

A residence order is intended to remove troublemakers from the area where they are causing trouble. It is, at the same time, a protection for the community and a punishment for the offender. It is certainly not an order that the offender may try and, if he doesn't enjoy what he finds, simply ignore.

In the present case, the appellant made no effort to fit in to the village. He talks of his elderly aunt being too old to look after him but did not raise a finger to look after her. He says he knew nobody else but did not stay long enough to get to know anybody.

The residence order was imposed to take him away from the urban environment that has so often encouraged him to drink to excess and act in an antisocial manner and to show him a life where socially acceptable behaviour is normal and accepted. It is a community where he is also expected to contribute by working in the community.

This appellant simply does not wish to do so; I am afraid I have no sympathy with him.

The appeal is dismissed. He is to be arrested immediately and conveyed to Loina village to comply with the residence order. I further ask that the police in Malaita check the village as frequently as is convenient to ascertain whether he is staying there.

(F.G.R. WARD)  
CHIEF JUSTICE