

DIRECTOR OF PUBLIC PROSECUTIONS v. JONES

High Court of Solomon Islands

(Ward C.J.)

Criminal Appeal Case No. 37 of 1990

Hearing: 29 October 1990

Judgment: 2 November 1990

F. Mwanosalua for the Appellant

A. H. Nori for the Respondent

WARD CJ: The appellant was convicted of two offences of fraudulent conversion committed when he was Deputy General Manager of the Home Finance Corporation.

Briefly, he was one of three possible signatories for cheques drawing on an account into which \$400,000 had been paid by the Ministry of Finance. The offences were committed by using cheques pre-signed by one of the other signatories before he left the country. On one occasion the appellant included, in a cheque to Coopers and Lybrand, \$503 fees owed by himself personally. On another he used a cheque to pay himself \$8,913.89 which the learned Chief Magistrate accepted accurately represented the sum he had up to that time earned as a 25% gratuity.

He was sentenced on the first count to 3 months imprisonment and, on the second, to 12 months imprisonment consecutive. The whole of the second sentence was suspended.

The Director of Public Prosecutions appeals against that sentence on the grounds -

1. That the sentences imposed were manifestly lenient having regard to the seriousness of the offences.
2. That the sentences were inconsistent with the level of sentences imposed in similar offences.
3. The imposition of a wholly suspended sentence (on one count) was wrong.

I deal first with the second ground. The Director of Public Prosecutions cited only one other case which is subject to appeal. I have looked at that case but I consider that, whilst comparison of one case with another may be of assistance to a limited extent, it can only give rise to a ground of appeal if the sentence is considerably out of line with the general pattern of sentencing for that type of offence. Comparison with a single case cannot give sufficient ground for this Court to interfere.

Ground one is an appeal against the suggested leniency of the sentences. The same principles apply in all appeals against sentence namely that the Court will only interfere if it is manifestly lenient or wrong in principle.

In sentencing, the learned Principal Magistrate said:

"As Mr. Nori correctly concedes offences of dishonesty committed by senior employees in relation to employer's funds are normally dealt with by way of immediate custodial sentences.

This case is slightly unusual in that it is apparently now accepted that the accused will be entitled to retain the \$8,913 the subject of Count 3. This does not in itself condone the accused's action in taking the money in the first place. I am satisfied that he acted dishonestly and that is the reason that he has been convicted.

Again Mr Nori is right to point out that the evidence discloses gross mismanagement of the

financial affairs of the HFC. While that may reflect on the competence of the other managers it does not exonerate the accused from responsibility. He was employed under contract to the HFC and in that capacity is expected to maintain high standards of honesty and good faith in respect of his employers property.

I take into account the accused's age, previous good character and the submissions that have been made with regard to his medical condition.

Nevertheless I cannot see that such a breach of trust by a senior employee can be dealt with otherwise than by a custodial sentence. The court must be consistent in its approach, and the approach of both this court and the High Court has clearly been to impose severe custodial sentences for this kind of offence.

There is always a discretion to individualise sentence as much as possible. In this particular case I feel that taking into account the accused's personal circumstances and the circumstance of the offences the court can properly suspend part of the sentence."

I accept his general comments. It is clearly necessary to pass immediate sentences of imprisonment in cases of breach of trust by employees. Having decided to do that he was correct to continue to exercise his discretion to pass an individual sentence and take into account such matters as the appellant's health and the enhanced effect a sentence of imprisonment must have where it is served in another country to his own. In offences such as these, the amount of money obtained is relevant in measuring the seriousness of the offence but the most important factor is the breach of trust. All employers who entrust their employees with control of money are entitled to expect a high standard of trust. The greater the responsibility of the position, the greater the betrayal of the trust when an offence is committed.

In this case, the appellant was the assistant general manager. As such he knew better than most the responsibilities involved and the consequences of breach. As such a senior employee he also knew that there was less chance

of his actions being questioned.

I appreciate the unusual situation in relation to the \$8,913 but this was still an extremely serious offence. He was leaving the country and he took it, he said, in anticipation of possibly not being able to return. It was accepted he had earned it but he was not entitled to it as of right as he must have known. In fact, by his offence in relation to the \$503, he had possibly forfeited that entitlement.

I am satisfied that, even allowing for the matters of mitigation considered by the learned Chief Magistrate, the total effect of these sentences is manifestly lenient. The actual sentence passed of 3 months and 12 months imprisonment consecutive reasonably reflects the gravity of the offences if considerable allowance is made for mitigation but the effect of suspending the whole of the second term results in a sentence that no longer truly reflects the seriousness of the offences.

I allow the appeal and alter the sentence on the second offence so that only 8 months of that sentence is suspended. The result is that he will serve a total sentence of 7 months imprisonment with 8 months suspended for two years.

(F.G.R. Ward)
CHIEF JUSTICE