RICHARD SELWYN -v- REGINAM

High Court of Solomon Islands
(Muria J.)
Criminal Case No. 25 of 1991
Hearing: 22 October 1991
Judgment: 23 October 1991

M. B. Samuel for the Appellant
F. Mwanesalua, DPP, for the Respondent

MURIA J: The appellant pleaded guilty to a charge of Simple Larceny and was sentenced to six (6) months imprisonment by the Magistrate's Court Central on 16th September 1991. The appellant also pleaded guilty to a charge of Malicious Damage and was fined $200-00. The appellant appealed against sentences in both counts. However, the appellant abandons his appeal against his sentence on the charge of Malicious Damages, and he now appeals only against his sentence on the charge of Simple Larceny.

Mrs Samuel submitted on behalf of the appellant that the sentence of six (6) months imprisonment was excessive in view of the fact that there has been a considerable delay of two and half years in this matter a factor what goes against section 10 of the Constitution and that the appellant has arranged for the return of the Chainsaw. Mrs Samuel argued that those factors together with his plea of guilty should be properly considered by the Magistrate before sentencing the appellant.

The learned Director of Public Prosecutions submitted that the mitigating factors for the appellant are his plea of guilty and delay of two and half years but those mitigation are outweighed by a number of factors, such as (1) the offence was premeditated in that appellant committed the offence in retaliation for his dismissal from the company, (2) the item (chainsaw) which belongs to the company was expensive, (3) the item has not been recovered, and (4) the appellant gained from the stolen item by selling it to another person. Those four factors considered against the appellant's guilty plea and the delay, says the DPP, show that six (6) months sentence cannot be in any way excessive.

On the question of a fair hearing within reasonable time argument under section 10(1) of the Constitution, there is no merit in that. There is no doubt that a substantial delay had occurred here, but that is on the question of bringing the complaint to the

attention of the Police. Such a delay can only go to mitigate an accused person's sentence, as it will be seen in this case.

The powers of this court at the hearing of an appeal are stated in section 292 of the Criminal Procedure Code, as I mentioned in Criminal Case Nos. 19 and 20 of 1991 (Judgement given 22nd October, 1991). But the guiding principle must be that this court will only interfere with the sentence imposed by the lower court if it is established that the sentence is manifestly excessive or wrong in principle. See the case of *Berekame -v- DPP* (1985 - 86) SILR 272 where it was held that a court of appeal will not interfere with the trial judge's discretion in passing sentence unless it is manifestly excessive or manifestly insufficient because, for instance, the judge has acted on a wrong principle or has clearly overlooked or understated or overstated or misunderstood some salient feature of the evidence.

Mrs Samuel submits that the Magistrate did not properly take into account the fact that the appellant pleaded guilty and the arrangement has been made with the company for the return of the item to the company. Counsel further says that the Magistrate did not properly take into account the two and half (2 1/2) years delay in the matter. There can be no suggestion that the Magistrate ignored the appellant's guilty plea and the arrangement for the return of the stolen item in this case. In fact, without those mitigating factors, in particular, the guilty plea, there is every likelihood that the sentence would have been longer than it is.

There is also the fact of delay in this case. The offence was committed in January 1989 and it was not until September this year that it was brought to court. The learned Director accepted that there is such delay in this case. He was not able to inform the court as to what causes the delay. But there is no doubt that the appellant admitted the offence to the police and in court, he readily admitted it as well. It is not clear to this Court as to how long the matter had been hanging in the appellant's mind. I am prepared to accept that the appellant and the company have entered into a satisfactory arrangement for the return of the item back to the company. Equally I accept that the appellant stole the chainsaw in an act of retaliation for his dismissal from the company. The Director of Public Prosecutions submitted that the appellant has three (3) previous convictions which is a relevant matter and the Magistrate also properly took into account. The case no doubt warranted a sentence of imprisonment and the Magistrate was right to impose the sentence of six months imprisonment on the appellant.

The only question is whether it is manifestly excessive or is there any feature in this case that warrant interference by this court of the sentence imposed by the Magistrate. The circumstances as I have found in this case are, firstly, the appellant

readily admitted his guilt both to the police and to the court; secondly, the appellant and the company (who owns the item stolen), have entered into a satisfactory arrangement for the return of stolen item; and thirdly, there is substantial delay in the prosecution of the offence. I have already found that the Magistrate did in fact consider the appellant's plea of guilty. But I feel he did not give sufficient consideration to the question of delay in bringing the case to the court. Those matters, in my judgement, warrant some mitigation of the sentence imposed in this case by ordering part of it to be suspended.

Thus, by my powers under section 292 of the Criminal Procedure Code I allow the appeal by ordering that 5 months of the six months imprisonment sentence on the simple larceny charge to be suspended for one (1) year.

(G.J.B. Muria)
JUDGE