

REGINA v. CHRISTOPHER KOB!

High Court of Solomon Islands

(Palmer J.)

Criminal Case No. 6 of 1995

Sentence (only): 23/3/95

F. Mwanosalua for Prosecution

T. Kama for Defendant

PALMER J: The accused has been convicted by the Central Magistrates Court on a charge of Larceny by Servant contrary to section 266(a)(i) of the Penal Code for stealing the total sum of \$65,519.66 from his employer, Bowmans Ltd. during the period of 23rd December, 1991 to 20th July 1993, and forwarded to this Court for sentence. The details of all those individual takings are contained in the annexure to the statement of facts as delivered in writing to the Magistrates Court and accepted by the Accused.

This offence is categorized as a felony and has a maximum prison sentence that the Court can impose of up to 14 years. Obviously, cases of extreme seriousness should be reserved for the maximum penalty.

I have had a look at some English cases and observed that one particular case, *R v. Barrick* (1985) 7 Cr. App. R. (S) 142 per judgment of Lord Lane C.J., sets out some useful guidelines for English Courts to use. However, those guidelines I feel are equally relevant and I will have regard to them in assessing this Accused's sentence.

The first item listed in that case refers to the quality and degree of trust reposed in the offender including his rank. I note that the accused occupied the position of a salesman or a counter clerk and was given responsibility over handling cash sales over the counter. In his

mitigation by Mr. Kama, he indicated that the 'A' started working for Bowmans in 1983. The string of thefts by this 'A' commenced in December of 1991, that is some 8 years of previous good behaviour and conduct with his employer. And it must be as a result of this good behaviour and conduct that this 'A' was then given responsibility over handling money. So although I note that there was a certain degree of trust reposed in this 'A', I must balance that with his previous 8 years of good behaviour and the temptations that arise with being given such responsibilities.

The second criteria is the period over which the thefts have been perpetrated. That does have a bearing as to the seriousness of this case. The thefts occurred over a period of 2½ years from December 1991 to July of 1993. Towards the later half, it was fairly consistent involving a number of thefts per month.

The 3rd criteria relates to the use the money was put. I note that it was spent on himself. I weigh this however against the facts submitted by Mr. Kama that the Company is taking active measures to recover all the money stolen at great personal expense to the Accused. I note that as a result his family has been displaced as a result of the sale of his matrimonial house and also the fact that when this Accused is released from prison, this debt will still hang over his head unless in the meantime it has been fully recovered.

Other matters listed in Barricks's case include the effect on fellow employees and the public and public confidence. In that regard there must be a certain amount of deterrence, and that has been reflected in some way by this custodial sentence.

Other factors I take into account are the youthfulness of the Accused at 34, and the chances of re-making and re-establishing himself once he comes out of prison. The sentence therefore should not be too long such that it destroys his confidence to return to society and try and make an honest living thereafter.

The value of the total money stolen must have some bearing in the length of sentence. If it was say less than \$1,000.00, then the sentence obviously would have been greatly reduced if it was a custodial sentence.

I give credit for the guilty plea given and also as I have indicated that he is a man of previous good character.

I also feel that the Company must bear some responsibility towards this man's continued and persistent thefts in not taking active steps or ensuring that his work is properly supervised.

Had that been done, this man's theft may have been discovered at an earlier date and his errands ways corrected maybe when the amounts taken were still small.

Taking all factors into account the accused is convicted and sentenced to 2½ years imprisonment with effect from 14/3/95.

ALBERT R. PALMER

A.R. PALMER

JUDGE