

HIGH COURT OF SOLOMON ISLANDS
Criminal Jurisdiction

BETWEEN:

FRAZER ELIMA

Appellant

AND:

REGINA

Respondent

Henry Kausimae for Prosecution
Stephen Lawrence for Prisoner Applicant

At Honiara: 1st November 2004

Brown J. I do not propose to hear from the prosecutor. The suggestion that this is a low level white dollar crime of little sophistication smacks of serious ethnocentrism.

When I read the magistrates' reasons, he has touched on all the matters of importance raised by Ms. Ruddock in the court below. The Magistrate was the Principal Magistrate and now the Chief Magistrate. In his summing up he clearly alluded to the matters in mitigation which gave him reason to reduce the sentence from that maximum of 14 years available under the Code. While he has not indicated what sentence he considered to be appropriate before taking mitigation into account that is not an error sufficient for this court's interference.

In this case the error must be manifest, in other words it must be such as to warrant this courts interference.

Where a sentence of 4.5 years is given for larceny of some \$132,400 by a Clerk in a position of trust; a larceny carried out over a period of months which caused a loss to the employer of (as the Magistrate says) a fortune by S.I. standard; where the fortnightly salary of basic government employees is approx \$250; this court must be satisfied the 4.5 years is so far from the range of tariffs as to justify interference. I am not so satisfied; especially when I see the legislature has imposed 14 years on trial conviction of this offence and a plea would attract 1/3 off at least on a worst case scenario.

Clearly argument about the separation of responsibility between persons who gamble & those who don't when considering sentence is not relevant in this place on appeal.

The responsibility for the offence lies with the offender.

The subtleties of splitting responsibilities in this fashion are not a matter for this court. The Magistrate had all the information before him which Ms. Ruddock saw as appropriate at that time. Now is not the time to seek to reargue the material; now is the time to point to the manifest error.

Mr. Lawrence says it relates to the failure in the Magistrate to balance these matters of aggravation with these in this prisoners favour, those matters in mitigation.

It is clear the magistrate took these matters into account and I cannot substitute my views on those aspects.

As I say, I cannot see manifest error.
The appeal against sentence is dismissed.