ATKINSON DO'ORO -v- REGINA

HIGH COURT OF SOLOMON ISLANDS
(KABUI, J.).

Criminal Appeal No. 297 of 2005

Date of Hearing: 6th October 2005.
Date of Judgment: 10th October 2005.

P. Little for the Crown.
K. Averre for the Appellant.

JUDGMENT

Kabui, J. Atkinson Do'oro is a prisoner currently serving a custodial sentence in the Rove Prison for offences he committed in August, 2003. He had pleaded guilty in January, 2004 to all the counts laid against him in the Magistrate Court. He has now appealed against the severity of his sentence describing it as being excessive.

error in grammar: He/he

The background.

The prisoner committed the offence of conspiracy to commit a felony on 7th August 2003 and the offences of arson, simple larceny and stealing as a servant, the following day, 8th August 2003. The prisoner had been the employee of the Diocese of Central Solomons when he committed the offences for which he was charged, pleaded guilty and sentenced. The National Bank of Solomon Islands (the NBSI) has an agency at Tulagi in the Central Islands Province. The NBSI agency is run by the Diocese of Central Solomons in a rented building owned by the former Development Bank of Solomon Islands (the DBSI). The prisoner was the Manager of that NBSI agency. So the prisoner was not the employee of the NBSI and the money stolen was in the possession of the Diocese of Central Solomons, his employer.

The number of charges laid against the prisoner to which he pleaded guilty.

The first charge was arson. The maximum penalty under section 319(a) of the Penal Code, (the Code), is imprisonment for life. The second charge was conspiracy to commit a felony. The maximum penalty under section 383 of the Code is imprisonment for seven years because arson is clearly a felony under the Code. The third and fourth charges were simple larceny and

stealing by servant respectively. The maximum penalty for simple larceny is imprisonment for five years under section 261 of the Code. The maximum penalty for stealing by a servant is imprisonment for fourteen years under section 273(1)(a) of the Code.

The sentences the Magistrate imposed.

For the offence of arson, the Magistrate imposed imprisonment for four years. For the offence of conspiracy to commit a felony, the Magistrate imposed imprisonment for eighteen months to be consecutive to the sentence imposed for the offence of arson so that the combined sentence for both offences is imprisonment for five and half years. The Magistrate imposed sentences of imprisonment for eighteen months each for the offences of simple larceny and stealing by servant. The Magistrate made them consecutive but to be concurrent to the sentence of imprisonment to five and half years imposed for arson and conspiracy to commit a felony. The effective sentence is therefore imprisonment for five and half years.

Is the sentence of five and half years excessive in this case?

The real issue here is obviously whether or not by making the sentence of imprisonment for eighteen months consecutive with imprisonment for four years does contravene the principle of totality in sentencing or is clearly excessive. In resolving this issue, two choices present themselves. First is reducing the sentence of imprisonment for four years for arson to a lesser sentence. The second is to make the sentence of imprisonment for eighteen months concurrent with the reduced sentence of imprisonment for arson. There is however a third choice. That is, reduce the sentence of imprisonment for arson and then reduce the sentence of imprisonment for conspiracy to commit a felony and make it concurrent with the reduced sentence for arson. I now turn to these choices. Resolving these choices will determine whether or not imprisonment for five and half years is manifestly excessive.

Is the sentence of imprisonment for four years for arson excessive?

The effective sentence of imprisonment for four years for arson was the sentence the Magistrate imposed on the prisoner. This being the case, can it be said that a sentence of imprisonment for four years was excessive in the circumstances of this case? In reaching his conclusion, the Magistrate believed that imprisonment for four years was the appropriate sentence for arson. The Magistrate did take into account the prisoner's guilty plea, being of good character without any previous conviction and his family circumstances, including losing his job. However, the Magistrate believed that a deterrent

sentence was called for in this case. The plan to commit arson was the prisoner's plan. He provided the petrol, matches and actually accompanied the arsonists and showed one of them where to burn and what to burn and then left them to do the job. He was the mastermind of the arson, an act done to cover up his stealing of $138,000.00.

Sometimes saying sorry is the easiest thing to say by anyone for misdeeds done. Expressing remorse are just words, like the wind. But remorse is a mitigating factor in sentencing. That is the value it has although it is not imperative that it must be accepted by the sentencing magistrate. The Magistrate's attitude was coined in these words that he wrote in his sentencing-

> **"Do this crime and, when found, you will go to prison for a long time".**

Those are harsh words but were they supposed not to be said? I do not think so. It is warning to others.

The letter from the Bishop.

The letter from Bishop Koete was a word of forgiveness from the Diocese from the Central Solomons as the prisoner's employer. It seems to suggest that the prisoner has a retail store and a beer shop in Tulagi and that restitution will come from there. Apart from that, the sum of $138,000.00 has not been repaid. The Bishop has also promised to support the prisoner's application for training at the Bishop Patterson Theological College, Kohimarama after he comes out of prison. In this respect, his rehabilitation is already assured.

Be that as it may, the law is different. A person who breaks the law must be punished and punished severely if it needs be. The prisoner had no excuse for what he did. He was callous. He was able to get two police officers to do the job for him and promised to pay them $5,000.00 each.

The value of the damage caused by the fire.

However, the extent of the damage caused by the fire is not clearly stated in the facts other than the counter, the floor mat, part of the floor and the strong box had burnt. The ceiling was also blackened by the fire. The documents were partly burnt. It seems the whole building had not been destroyed by fire as it was put out quickly. It seems the damage to the building was not a total damage. The damage has not been assessed in monetary terms and so I assume it was negligible.

Sentence for arson to be reduced.

Imprisonment for four years is I think a little excessive for arson in the circumstances of the case. I would substitute imprisonment for three years for imprisonment for four years.

This is not leniency but giving a sentence that befits the circumstances of the case.

Examples of previous sentences for arson.

The sentence of imprisonment for three years is not out of range for the offence of arson. In **Regina v. Mwasio**, Criminal Case No. 20 of 1994, Muria, C.J. sentenced the prisoner to imprisonment for three years for burning down a dwelling house over a dispute over customary land. In **Regina v. Ben Ofoania Mino**, Criminal Case No. 4 of 1997, Palmer, J. (as he then was), sentenced the prisoner to imprisonment for three and half years. In that case, the prisoner had a grudge against a logging company and took out his anger on the building housing the office of that logging company. He drove to the building, told the occupants of the building to get out, poured petrol into and outside of the building and set it ablaze. The building was completely destroyed by the fire. The damage was over three quarters of a million dollars. The prisoner was a first offender though he had one previous conviction which was irrelevant. In **Regina v. Jimmy Moula, Jonathan Ilala, Samuel Riasi, Jackson Siau and Silas Barnabas**, Criminal Case No. 187 of 2002, Palmer, C.J. commented that in a typical arson case, a sentence of imprisonment for three years was within range.

Sentence for conspiring to commit a felony not to be reduced but to remain concurrent.

I will not reduce the sentence of imprisonment for eighteen months for conspiring to commit a felony but will make it concurrent with the imprisonment for three years sentence that I have imposed for the offence of arson. The offences committed were all against the same victim being the Diocese of the Central Solomons and therefore the sentences can be made concurrent with each other. This means that in this case the only effective sentence now standing is imprisonment for three years. Arguments about the double jeopardy rule, duplicity and wrong charges were raised but I think such arguments do not now deserve any comment by the Court for obvious reason. That is, the prisoner stands punished for the offence of arson only in real terms as a result of the sentences for other offences being made concurrent to the effective punishment for arson.

Conclusion.

I would quash the sentence of imprisonment for five and half years and substitute imprisonment for three years. I further quash the order that the sentence of imprisonment for eighteen months for conspiring to commit a felony to be consecutive with the sentence for arson and substitute the order that the sentence for conspiring to commit a felony be made concurrent with the sentence for arson. The combined effective sentence is therefore imprisonment for three years.

The orders of the Court.

1. Quash the sentence of imprisonment for five and half years;

2. Substitute a sentence of imprisonment for three years;

3. Quash the order that the sentence of imprisonment for eighteen months for conspiracy to commit a felony be made consecutive with the sentence of four years for arson;

4. Substitute the order that the sentence of imprisonment for eighteen months for conspiracy to commit a felony be made concurrent with the sentence of imprisonment for three years above for arson.

5. The sentence of imprisonment for three years will be effective from the date of initial remand in custody but excluding anytime on bail.

6. The appeal is allowed.

I order accordingly.

Frank O. Kabui
Puisne Judge