

REGINA -v- BUGA

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

Criminal Case No. 105 of 2004.

Date of Hearing: 8, 12 and 23rd August, 2005.

Date of Order: 24th August 2005.

R.B. Talasasa for the Crown

M. Swift for the Appellant

ORDER

Kabui, J: In my judgment delivered on 26th March 2004, I quashed the sentence of three months imprisonment imposed on the appellant by the Magistrate Court sitting in Honiara on 24th March 2004 for two counts of simple larceny, contrary to section 261 of the Penal Code Act, "the Code." At the relevant time, the appellant was a juvenile between thirteen and fourteen years of age. I did not substitute any lesser sentence for the sentence I quashed. Instead, I wanted to see a supplementary social welfare report on the appellant and for that purpose, I made an order that a supplementary social welfare report be done and filed in Court. That report had been done and filed accordingly. I had also granted bail on conditions to the appellant. When the appellant appeared before me on 8th August 2005, he was on remand and in the custody of Rove Prison officers in relation to other offences he committed after I granted bail. He clearly had breached condition (c) of the bail I granted and so was refused subsequent bail. He had been convicted and sentenced by the Magistrate's Court sitting in Honiara on Monday 22nd August 2005 for the offences committed whilst on bail. I was told by Miss Swift that the Magistrate's Court had sentenced the appellant to serve a custodial sentence but that sentence was suspended and the appellant was ordered by the Magistrate's Court to return to his home village on Malaita and to remain there for two years, perhaps for that period of suspension. Having quashed the sentence of three months imprisonment for two counts of simple larceny as I did in my judgment delivered on 26th March 2004, I now conclude this appeal by making the order in substitution thereof that the appellant be committed into the care of his parents and relatives living at Forau village, Ata'a, North Malaita under section 16(d) of the Juveniles Act, (Cap.14) "the Act". The appellant being a juvenile is entitled to have the benefit of the modes of punishment set out in section 16 of the Act. I consider that his parents do

include relatives in custom, especially the brothers of his father or their wives or the sisters and brothers of his mother and their spouses if they are surviving. I order accordingly. The appeal is allowed. Whilst the order of this Court is in a way supplementary to the sentence imposed by the Magistrate's Court, it is a decision made independently of the Magistrate's Court's sentence imposed also independently of the High Court. In that regard, I do not think this Court has the power to make any further orders to supplement the residential order made by the Magistrate's Court for obvious reason. This Court has not made any residential order and therefore who meets the cost of the appellant's travelling home and would look after him whilst waiting to go home are not concerns of this Court. Such matters should be discussed with the appropriate authorities.

F.O. Kabui
Puisne Judge