

IN THE HIGH COURT
OF SOLOMON ISLANDS

(Goldsbrough J)

Simon Mannie

Appellant

v

Regina

Respondent

Date of Hearing: 28 September 2006

Date of Judgment: 12 December 2006

Appeal against sentence

CRC's 1218/2004 – 803/2004 – 391/2005 CMC

These are appeals against sentences imposed by the magistrates' court. Simon Mannie has been sentenced on three occasions in the magistrates' court - the subject of these appeals.

The first sentence against which he appeals was imposed on him on 8 September 2004. On that occasion he was sentenced to a total of three years imprisonment for three offences which occurred on the same occasion in 2002. Those offences were the unlawful possession of a firearm, threatening harm with a firearm and going armed in public. For the first two of those offences he was sentenced to two years imprisonment and for the third one year of imprisonment to be served consecutively. That sentence was expressed to begin on 20 April 2004, the date on which he was taken into custody.

No record of the proceedings in the magistrates' court for this occasion has been forwarded to the High Court for this appeal. That in itself has contributed to the delay in the hearing of this matter. I am grateful to the prosecution for outlining the details of the offences for which this sentence was imposed. In the absence of the record I do not know what in particular about these offences, which appear to all arise out of the same incident, that suggested to the magistrate that the third term of imprisonment should have been ordered to be consecutive. I am of the view that, in sentencing, the magistrate should have looked at the total criminality involved in the act, however it may have been presented in terms of charges, and imposed a total sentence that reflected that criminality. It may well, then, have been more appropriate to impose

one sentence that reflected this criminality and order subsequent terms of imprisonment to run concurrently with the first term.

I note that the maximum terms were imposed for some offences in this sentence. That itself might dictate that it was not possible to adopt this sentencing approach. But if consecutive terms were used to circumvent the maximum permissible penalty this is also a mistaken approach. Again in the absence of the record one does not know what it was about these particular offences that appeared to the magistrate to warrant maximum terms.

In the circumstances presented it appears that the appropriate order to be made in this appeal would be to allow the appeal against this sentence and to order that the sentence be varied by ordering that the three terms of imprisonment be concurrent. Simon Mannie is sentenced to a two year period of imprisonment for these three offences commencing from 20 April 2004.

The second sentence against which the appeal is brought was imposed on 27 October 2004. That sentence was a sentence of three years and three months imprisonment for an offence of assault occasioning actual bodily harm (an incident in December 2002). The circumstances of that offence again have been outlined to this court by the prosecution for which the court is grateful. That term of imprisonment was expressed to be consecutive "to any other sentences passed". I take that to mean that it was to be consecutive to the total period of imprisonment to which the defendant was already subject. However, the unfortunate choice of words used in sentencing permits the interpretation that the sentence would be consecutive to any sentence, even a future sentence still to be imposed, and this is clearly wrong. In determining that a sentence of imprisonment is to run consecutively, it is important that clear words are used to express this notion. To fail to do so might have the effect of not achieving the desired objective. I have looked at various phrases used in varying jurisdictions and find that there are a number of ways of expressing such a sentence but suggest, unless a sentencing court has already found another more suitable term which clearly achieves its objective that the phrase

"consecutive to the total period of imprisonment to which this defendant is already subject."

is most apt in the circumstances.

In sentencing the magistrate indicated that the injuries resulting from the assault were not at the high end of the scale of assaults occasioning actual bodily harm. He saw the real danger in the participation of this accused as his being the ring leader, not, perhaps, inflicting the blows himself but facilitating the action of others. He also took into account that he found that this accused was desirous of this victim being severely beaten for a perceived offence against him. He was aware when sentencing that the accused had been in custody for other matters and clearly indicated that he was not

prepared to take into account any previous periods of custody. He then continued to order that this sentence of three years and three months be consecutive.

Whilst it is important, as the magistrate said, from time to time to send out a clear message that assaults such as this will attract a custodial sentence, one is also obliged to take into account when sentencing the total effect of all sentences on the individual being sentenced. This principle has been referred to in a number of appeal cases and is equally applicable here. Whilst there is a natural inclination to ensure that a further offence attracts its own punishment and that that punishment must be additional to any other punishment, this, in practice, cannot always be successfully achieved. The simplest example of such a scenario is when sentencing an accused who is already serving a sentence of life imprisonment. There, whatever sentence is subsequently imposed, there can be little practical effect. This is not such a case, but nevertheless it is incumbent upon the sentencing court to consider the total period of imprisonment that a consecutive order will mean to an individual. I will return to this later, when considering the third sentence imposed on this man. With regard to this sentence, it is apparent that the total effect of a consecutive order of imprisonment was not properly considered by the sentencing court. Coupled as it is with the defective expression of intent with regards to its consecutive nature, I conclude that the appropriate disposal of this appeal is to order that the sentence of three years and three months commence as at the date of imposition, that is to say 27 October 2004.

The third sentence against which an appeal is brought was imposed on 9 June 2005. It is in respect of two offences of threatening violence with a firearm, again for offences which occurred in 2002. The sentence for each offence is eighteen months imprisonment, to be served concurrently with each other. At the same time a fine of \$500 was imposed for an assault occasioning actual bodily harm and \$100 for a common assault. Immediately these fines were converted to terms of imprisonment in default, and those terms were ordered to be served consecutively to the total period of imprisonment to which the defendant was already subject, and then the newly imposed term eighteen months was expressed to be consecutive to the default imprisonment.

That, however, was never translated into action. The warrant of commitment of imprisonment for the two offences of threatening with a firearm expressly provides for the term to commence immediately and the warrant in default of payment of the fine has not yet been issued or signed.

In sentencing this accused to a fine, the magistrate expressly concluded that the offences themselves did not warrant a period of imprisonment. Given that the accused was already in custody and a period of imprisonment in default of paying the imposed fines was immediately imposed, this seems to demonstrate a contradiction. If the offences did not warrant a period of imprisonment, it was wrong to do as the magistrate did and effectively sentence the defendant to a period of imprisonment in default. Since the defendant was already in custody and there was no evidence that he could pay a fine from funds available to him, another sentence should have been

imposed, or no separate penalty imposed. Since the magistrate was in any event imposing a further period of imprisonment for other offences being considered at the same time, it would have been entirely proper to simply impose a terms that reflected the total criminality being dealt with.

Where offences themselves do not merit a custodial sentence and it is not possible through circumstances to impose a fine then another way of disposing of the case must be found rather than imposing fines and immediate default imprisonment. That may, if the circumstances of the case warrants the same, involve consideration of the provisions of section 35 of the Penal Code. But to impose the default imprisonment immediately upon conviction and sentence is contradicting the notion that the offence does not warrant imprisonment.

In the event it is ordered that, in respect of the charge of assault occasioning actual bodily harm and in respect of the charge of simple assault the accused is given time to pay the fines of \$600 following his release from custody. Provided that he pays those fines within a reasonable time following his release no further action will be taken.

As to the remaining sentences of eighteen months imprisonment, those terms are not varied on appeal save to the extent that this court orders, as indeed the original warrant of commitment orders, that those terms commence on the date of imposition, that is to say 9 June 2005.

I have so ordered with regard to the third sentence taking into account once again that when sentencing an offender who is already the subject of other sentences, whether they be sentence of imprisonment or indeed of financial penalties, a sentencing officer needs to consider the total effect of all sentences or orders when dealing with subsequent offences. Looking at all the offences for which this man has been sentenced one is faced with a total period of imprisonment that far exceeds that which the totality of his criminal behaviour warrants. Whilst taken individually one might not conclude that a particular sentence is indeed manifestly excessive, that conclusion becomes more obvious when the total period of imprisonment imposed is viewed as it is in this appeal. That should have been taken into account by the magistrates when imposing these consecutive sentences and appears not to have been so taken into account. That is a failure which this court is obliged to rectify and results in the orders as described above.

The following is a summary of the order contained with the body of this judgment on appeals against sentence:

Appeal 1

Allow the appeal against sentence to the extent that the three sentence of imprisonment are to be served concurrently, their respective terms otherwise being unaltered.

(Simon Mannie is sentenced to a total of two years imprisonment for these three offences commencing from 20 April 2004.)

Appeal 2

Appeal allowed to the extent that the sentence of imprisonment is ordered to commence as at the date of imposition, that is to say 27 October 2004

(Simon Mannie is sentenced to three years and three months commencing from 27 October 2004.)

Appeal 3

Appeal allowed to the extent that the periods of imprisonment in default of payment of the fines of \$500 and \$100 are quashed, the original fines imposed are quashed and an order made that for the offences of assault occasioning actual bodily harm and assault no separate penalty is imposed. The sentences of eighteen months imprisonment imposed for offences of threatening violence with a firearm ordered to be served concurrently with each other and with effect from 9 June 2005.

By order of the Court

Goldsbrough J