

ISAAC OKA .V. REGINA

**High Court of Solomon Islands
(Palmer CJ.)**

Criminal Case Number 9 of 2006

Date of Hearing: 27th October 2006

Date of Judgement: 18th May 2007

**Patrick Southey for the Appellant
H. Kausimae for the Crown**

Palmer CJ.:

This is an appeal by Isaac Oka, ("Oka") a juvenile, against a sentence of 12 months imprisonment imposed by the Magistrates' Court sitting at Lata on 20th September 2005. The appeal was not lodged until 11th January 2006, well after the time limit of 14 days¹ had expired. The Court however has power to extend the time limit where good cause² has been shown. I am satisfied the time limit should be enlarged on the grounds that Oka was unrepresented in the Magistrates' Court and that there were difficulties in getting assistance from the Public Solicitor's Office to receive instructions and lodge appeals on behalf of the appellant. In the late 1980's and early 1990's Lata used to have an Officer from the Public Solicitor's Office resident there and so was able to service the public on a full time basis. That is no longer the case and legal service to the public is currently provided on an ad hoc basis from the Public Solicitor's Office in Honiara. By the time instructions were communicated to the Public Solicitor's Office in Honiara, the time limit for lodging appeals had expired.

Oka had been charged together with a co-offender, an adult of 20 years for breaking into the store-room of Maina Primary School and removing a tool box. The loss was discovered later and after investigations Oka and his co-accused were arrested and charged. They pleaded guilty at their appearance in court.

The court took into account that they were first offenders. The court was told that only some tools were recovered and a list provided. The court was told that the tools were a gift from the New Zealand Government. When considering sentence, the court decided to impose a deterrent sentence.

By the time appeals were lodged and processed through to the High Court, the appellant had served his sentence. Delays were compounded by the

¹ Section 285(1) of the Criminal Procedure Code

² s. 285(1)(a) of the CPC.

distance and remoteness of Lata, in the Eastern Outer Islands and the difficulties in having the court records processed in time for the appeal. The appellant nevertheless insisted that his appeal be dealt with for purposes of setting the records straight and for the future benefit of others in similar situations.

The main mitigating factor relied on by Mr. Southey in favour of the appellant was his age. At time of commission of offence he was only 17 years old and therefore regarded as a young person under the Juvenile Offenders Act (Cap. 14) ("the Juvenile Act"). This Act makes specific provisions on how young persons are to be dealt with. So whilst his involvement with an adult in the commission of the offence was serious, the court was obliged to consider his case separately when it came to sentence, for the law provides that no young person shall be sentenced to imprisonment if he can be suitably dealt with in any other way specified in section 16 of the Juvenile Act.

Having heard submissions of learned Counsels in this matter, and having considered the records of the presiding Magistrate, I am satisfied the presiding Magistrate did not take this aspect of sentencing into account. The appellant was unrepresented in the Magistrates' Court and that did not help either.

I am satisfied that in imposing the same sentence of 12 months for the appellant with the adult offender the learned Magistrate committed an error of law and imposed a sentence which not only was not particularized to the appellant in view of his juvenile status but was manifestly excessive and warrants the intervention of this court.

All Magistrates need to be reminded of the specific requirements of the Juvenile Act when sentencing juveniles, even in the situation where they may have been charged together with other adult co-offenders.

I am satisfied the order of the learned Magistrate should be quashed and substituted with a sentence of six months but suspended for one year.

Orders of the Court:

- 1. Enlarge time limit for filing appeal to 11th January 2006.**
- 2. Allow appeal.**
- 3. Quash orders of the Magistrates' Court imposing a sentence of 12 months imprisonment.**
- 4. Substitute a sentence of six months imprisonment but suspended for twelve months.**

The Court.