

R v Heleta

Supreme Court, Nuku'alofa

Lewis J

10 Cr 50/97

15 April, 1997

Criminal law - sentencing - suspended sentence - subsequent offending
Sentencing - principles - youth - suspended sentence - subsequent offending

The defendant was given a sentence of 9 months imprisonment suspended for 2 years, in the Supreme Court. Subsequently he was convicted and sentenced to 3 months imprisonment in the Magistrates Court. On application to lift the suspension.

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Held:

1. The defendant, aged 16, would be serving the sentence of imprisonment in an adult environment with inmates convicted of far more serious crimes. What he will learn is likely to plague the community for years to come.
2. Almost universally prisons separate children from adults for good reason.
3. The court had no alternative however having regard to the provisions of s.24(3)(c). Criminal Offences Act, but to lift the suspension and direct that the 9 months be served cumulative upon the 3 months.

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Statutes considered : Criminal Offences Act s.24

Counsel for prosecution : Ms Bloomfield

Defendant in person

Judgment

40 Katalisi Heleta aged 16 years (born 23 February 1981) was convicted and sentenced on 9 December 1996 of five counts of Housebreaking and theft. He was sentenced to 9 months imprisonment on each count concurrently. The operation of the sentence was suspended on his giving an undertaking to not re-offend within two years of sentence. In addition he was ordered to undertake 100 hours of Community service to be completed on or before 31 March 1997.

He is one of 5 boys charged with similar offences in relation to a number of premises. He played a principal role in the offending. The Crown alleged, and Katalisi admitted, relevant prior offending by Katalisi. Those offences were taken into account in the fixing of sentences, together with his youth and other factors personal to Katalisi which were obtained from a social enquiry report.

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Katalisi admits that on 11 February 1997 he was convicted before a Magistrate of the offences of running from Police and escaping custody and sentenced on each count to 3 months imprisonment concurrently. He was further subject to a charge of housebreaking and theft which at last report was part heard before a Magistrate. A certificate of convictions is before this court.

I have obtained a progress Report from the probation officer who said among other significant things:

"Katalisi's community work had begun well and his supervisor was pleased with his attendance and standard of work. He completed 21 hours before he was arrested."

In a further Report the probation officer informed the Court that Katalisi had completed 21 hours of the 100 hours imposed on him by the Court by the 31 March, 1997. Today the position I am told that he has been in custody since then and no further community service has been done.

It must be remembered that Katalisi is a very young person (in the context of the Criminal Justice system). The probation officer remarks:

"Katalisi seems to have very limited ideas about right and wrong. He seems to need very close supervision and guidance for his own sake and to protect the property of others. It is unfortunate that he was not able to continue his Community Service as he may have developed some maturity and self esteem by achieving success in this."

It is to be remembered that if sentences imposed upon Katalisi are carried into effect as a result of today's Orders, he will be serving the sentences in an adult environment where there are inmates convicted of far more serious crimes. Katalisi will spend time with recidivists, child molesters and competent teachers of crime all of whom will be, I am sure, interested in the arrival in their midst of Katalisi.

It should be remembered by all involved in the justice system that prison work practices, imposed on adults, will be imposed upon Katalisi. If he is shown leniency in the exercise of some discretion to allow for his tender years, which the prison authorities see themselves as having, such leniency will be properly resented by adult inmates, such resentment generating in turn its own sanctions against him.

Notions of the separation of Juvenile offenders from the adult criminal population are not new. Almost universally prisons separate children from adults with good reason. I express my concern that Katalisi should be sent to prison where any hope of his obtaining close supervision and guidance of the kind referred to by the probation officer is non-existent. What he will learn is likely to plague the community here for years to come.

Having said those things it is now necessary to consider the course to take. First it should be noted that the reference to suspension of sentence in the Criminal Offences Act appear at s.24(3):-

- "3. (a) It shall be lawful for the Court when imposing a sentence of imprisonment to suspend the whole or part of such sentence for any period up to 3 years.
(b) Such sentence will be conditional on the offender not being convicted of an offence punishable by imprisonment during the period of suspension.
(c) In the event of the offender being convicted of an offence punishable by imprisonment during the period of suspension he will thereupon be sentenced to serve the term of the suspended sentence in addition to the

punishment imposed for such subsequent offence.

I find that Katalisi Heleta has been found guilty of offences punishable by imprisonment during the period of suspension imposed upon him by this court on 9 Decmeber 1996. Accordingly this court has no alternative having regard to the provisions of the Criminal Offences Acts. 24(3)(c). Therefore the sentences of 9 months imprisonment for the offences of Housebreaking and theft imposed in this Court on 9 December 1996 are to commence at the conclusion of the sentences imposed upon him by the Magistrate.

110 As a matter of practice I would suggest to the prosecution that matters in which a suspended sentence is about to be called up and application made for the lifting of the suspension, all matters connected with t he application should be referred to the court where the suspended sentence was first imposed.