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IN THE SUPREME COURT
OF THE TERRITORY OF
PAPUA AND NEW GUINEA.

CORAM : MANN C.J.

IN THE MATTER of an Appeal from the District Court under the District Courts Ordinance 1963-1965.

BETWEEN: SAPULO MASUWE of Sego Goroka
Appellant.

and

S/I THACKERAY of Port Moresby.
Respondent.

REASONS FOR JUDGMENT.

Pt.Moresby. 24th and 26th August, 1966.

This was an appeal from a judgment of the District Court at Port Moresby whereby the appellant was sentenced to one months' imprisonment for stealing one tea towel, valued 40 cents, and one pair of shorts, valued 95 cents. The total value of the property involved comes to 135 cents, which, so far as the appellant is concerned, is quite a trivial sum of money. The appellant is in sound employment. He is qualified in his trade and the money he earns makes the property involved quite small.

One thing that must be borne in mind is that to the owner of that property the value of it is by no means trivial. Many people living under urbanised conditions in Port Moresby find it very hard indeed to dress themselves, even at a minimum scale, and a theft of a couple of items of this nature could be a serious embarrassment to somebody who is not employed at a substantial wage, or who may be only intermittently employed. Therefore, it would be quite wrong for the Court to proceed to deal with this case on the footing that the property involved was of trivial value.

The offence in question is one which, of necessity, carries a high loading of criminal responsibility and up to three years' imprisonment may be imposed. The sentence then of one month for an offence such as this is about as small as a sentence for this class of criminal behaviour could be expected to be.

The learned Magistrate in his reasons for his decision indicated that he was imposing this sentence having regard to the necessity for it to act as a deterrent to other possible offenders. Therefore, it would not be right to say that the Magistrate intended to impose a purely nominal sentence. He did mean it to be a sentence which would act as a deterrent, but the element of deterrence involved is certainly not, in my view, extraordinary for its weight. It is still a small sentence. Thus, the learned Magistrate appears to me to have taken into account quite fully the relatively low value of the goods stolen.

It is well established in law, (and I was referred to the case of O'Neill v. Graham, Ex parte Graham, (1952) Q.S.R. p.79.) that there must be something wrong with a judgment before an Appeal Court will interfere. It must appear to the satisfaction of the Appeal Court that there has been some miscarriage of justice, or at least some fault on the part of the Magistrate in the application of established legal principles to the facts before him. He must have allowed some consideration to influence his mind wrongly. If the learned Magistrate in this case took everything into account and arrived at a moderate assessment of the criminal responsibility involved, there is no ground upon which a Court of Appeal will interfere.

Notwithstanding these principles, on the hearing of the appeal I thought it necessary to hear the evidence which the appellant wished to call on his behalf. He was not represented by Counsel in the District Court and always there is a risk that a person who appears alone and who is not skilled in the marshalling of arguments will fail to place before the Court matters that would carry substantial weight on the question of penalty. In practice, Magistrates should, and they undoubtedly do, take this into account and endeavour to assist the defendant in placing before the Court such matters as might be thought to be of assistance to him.

The respondent, was represented on the appeal by Counsel, and was prepared to consent to this additional evidence being called, but on the under-

standing that that consent involved no admission that the evidence would have made any difference to the determination of the Magistrate and without conceding that there was any legal ground for review and re-assessment of the sentence.

Having heard the evidence I think that there is nothing in it which would be likely to alter the view expressed by the Magistrate. I have every sympathy for the appellant, but I see that the learned Magistrate has in fact gone to a good deal of trouble to inform himself of, and to place on the record, the circumstances which he took into account in arriving at his assessment of the penalty. The learned Magistrate has had much experience in eliciting circumstances which might be of value to an accused person in criminal and quasi-criminal proceedings. I think that the facts noted on the Court record show that he has done this fully and fairly.

My own assessment of the appellant is that he is in a situation in which he must make up his own mind to impose upon himself that kind of self-control and discipline which is going to be essential to him if he is going to make progress in a rapidly developing society. As a senior employee he has much responsibility to carry and unless he can carry this adequately and firmly he will simply not get on in any commercial enterprise. It is most unfortunate that his career should be prejudiced at this stage for something which, to him at any rate, involves such a trivial consideration. The learned Magistrate is in the best possible position to assess the sentence which would be appropriate in conditions of rapid change and in urbanised conditions. I see nothing unreasonable, or in the slightest degree harsh, about this sentence. I can see that it is a hardship for the appellant, but it is a hardship which he has imposed on himself and I think that the Magistrate acted properly in imposing a sentence which would not be regarded as trivial.

I might add the submissions put before me on the hearing of the appeal, to the effect that the appellant should be released on a bond, appeared to me to be convincing. I might well have acted

accordingly if this case had been before me for the first time. I do not say that I would have done so, but I think that it is likely that I would have acceded to Counsel's request. However, it is not for me to set aside what appears to be a perfectly reasonable and sound assessment simply on the grounds that I might, if I had been sitting in the first instance, have acted differently.

I think that the appeal must be dismissed.

The appellant has been generously treated in connection with this matter by his employers, who do not appear to have been willing to allow this situation to prejudice the appellant's career. He is on bail, and presumably has been working, and in order to cause the least inconvenience to him, and to his employers, I would be prepared to order a Stay of Proceedings for a short period of time to allow appropriate arrangements to be made. In the meantime, I think the appellant might well be accorded his freedom for a brief period. I think this will afford him an opportunity to measure up to the kind of responsibilities which he may have to face. What I have in mind is a day or so. I know that this is Friday and we have a weekend coming. I will leave the matter there, and invite Counsel to let me know at what period the Magistrate's Order might appropriately commence to run again.

Subsequently, on further application by Counsel : Order stay of execution of order until 8.30 a.m. on Monday next, 29th August, 1966.