

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

CORAM: RAINE, J.
 Wednesday,
 15th September, 1971.

THE QUEEN v. AMUNA MARUANA of KERAN
(Nine Indictments)

JUDGMENT ON SENTENCE

1971
 Sept 9,
 10, 15
 PORT
 Moresby
 Raine, J.

The prisoner has pleaded guilty to the counts contained in nine indictments. In five indictments there are two counts, the first in each case alleging the breaking and entering of a dwelling house with intent to commit a crime, the second in each case alleging stealing therein of goods or goods and money. In the remaining four indictments there is only one count alleging breaking and entering a dwelling house with intent.

Mr. Cowdery of Counsel for the prisoner was willing for me to hear all the indictments together. Thus, in each case the prisoner was arraigned, pleaded guilty, the depositions were tendered, I read them, accepted the plea or pleas, the antecedent report was tendered, and then came the allocutus, Mr. Cowdery reserving his address until after the ninth indictment had been dealt with.

As can be imagined this took a long, long time and was repetitious in the real sense of that word, because the charges were all very similar, the cases against the prisoner were all much of a muchness, and the allocutus hardly varied. Added to this the prisoner is rather a simple sort of man, and although his pidgin was fairly good, he said things in such an odd way at times that the interpreter, through no fault of his, had very real difficulties.

Mr. Cowdery was quite prepared to plead guilty to the first indictment, which contained two counts, asking me to take all the other crimes into account. This would have saved about three extra hours of boring and seemingly useless work. This is quite

1971
The Queen
v.
Amuna
Maruana
of Keran

Raine, J.

often done in Rabaul, where Mr. Norris Pratt hands in a sheet or sheets of paper with a short statement of the other crimes, which he signs, and in relation to these the Crown, either expressly, or by implication, undertakes not to proceed with indictments prepared or about to be prepared touching the matters the trial Judge is asked to take into account.

There is no statutory authority here for such a course, as there is elsewhere, e.g. section 447B, Crimes Act, 1900 (N.S.W.) but there is no reason for such a course not being adopted here by consent.

However, in these matters the Crown Prosecutor had strict instructions and informed me that he could not consent to do what Mr. Cowdery was willing and I certainly wished to do.

Apparently the Crown wants all the convictions recorded. I would have thought, were the prisoner convicted again after his release from the imprisonment I propose to award, that it would be a simple matter, when setting out his prior offences in the antecedent report, to add that ~~eight~~^{twelve} other similar offences had been taken into account by the trial judge.

If the Crown here feels that in the absence of statutory authority problems might arise not apprehended by me, or by those in Rabaul, then I can only hope that legislation is brought down to cure the problems, be they real or imagined. If ever there was a cri de coeur this is one, as I do not want to endure this sort of thing again. It must have been confusing for the prisoner. He had been caught, all he wanted to do was to admit that he had broken into nine homes and stolen from five of them.

To some extent the situation will be cured when, as I understand, legislation is enacted permitting non-connected charges to be lumped together in the one indictment. But what if there

are fifty counts? It is a waste of the court's time to be burdened with the task of interpreting and explaining each of them.

The offences were committed this year (and this is not in the order of the indictments) on 8th and 18th February, 26th March, 25th and 29th April, 7th, 12th and 21st May, and one on an unspecified day in May.

In all, the prisoner stole about \$70.00 in cash, plus an aluminium preserving can, an umbrella, a transistor, a camera, a bottle of whisky, clothes, shoes and 30 lbs. of frozen meat and a few other bits and pieces.

The prisoner had no prior convictions. He is about 29 years of age, and obviously is, and is stated to be, uneducated. I would add that I think he is fairly unsophisticated. As I have already said, I also think he is a bit simple. I do not mean by this that he has psychological problems, if he has I am not qualified to say so. But I do think he is a disturbed, simple man and this troubles me.

He has pleaded guilty, in some of the cases he made admissions to the police, in others not. I take this into account. He has been in custody for just over two months, but about three weeks of that is all I take into account, as he commenced a sentence of three months for some other crime on 3rd August.

I also take into account his simple mind, the fact that most of the property has been recovered, that he is deeply and probably sincerely concerned about his family, which makes gaol the worse for him, that despite his lack of education he has had a very good employment record, and the fact that these were daylight offences. Most of the things taken were what one might expect with this class of offender. I also think he is a bit remorseful. Cynics might say this is remorse at being caught, and this is partly true I imagine, but I also think the prisoner has some remorse springing from the realisation that he has been a fool. He invites me to restrict his entry into this town on his release. It would not surprise me at all if he started his criminal career because of marriage pressures.

He married in 1968 and now has two children. He first gets into trouble on 8th February, 1971. The elder child is three. He possibly got along well enough here as a single man, but the need to provide for a growing family, and possibly the desire to impress a new wife, could have caused the trouble.

Taking all these matters into account I have decided to give this simple-minded man a sentence that is much lighter than would have been imposed in most cases, however it must be fairly severe, nine breakings in just under four months is serious.

I sentence the prisoner to be imprisoned for a period of one year and nine months with hard labour on each of the first counts in the nine indictments and to imprisonment with hard labour for a period of one year on each of the five second counts alleging stealing.

I order that the sentences be served concurrently.

Solicitor for the Crown: P.J. Clay, Crown Solicitor
Solicitor for the Accused: W.A. Lalor, Public Solicitor