IN THE SUPREME COURT
OF PAPUA NEW GUINEA

CORAM: PRENTICE, J.
Thursday,
19th July, 1973.

REG. v. KANA SEILIGA

Remarks on Sentence

1973
July 10, 11
WEWAK
July 19.
PORT MORESBY
Prentice J.

This accused was brought before me at Wewak on 10th July, 1973 on a number of charges of breaking and entering, and of stealing. Six indictments, some with two counts, were presented against him. Some of these were ex officio indictments. The accused indicated that he wished two other malefactions of his to be taken into account on sentence.

Mr. Bradshaw protested against the presentation of multiple indictments, claiming that the proceedings were a mockery and amounted to persecution. He referred me to certain remarks of my brother Raine which he said condemned such a course by the Crown, and asked that additional comments be made by me that would provide further and stronger guidance to Crown officers. I considered that I should proceed to sentence and to reserve the right to make, at a later stage, perhaps some comment.

I have now had the opportunity of looking afresh at Raine, J.'s judgment which I take to be The Queen v. Amuna Maruana (1). His Honour was concerned there with the waste of the court's and counsel's time that would result from the presentation of many indictments, merely for the purpose of recording convictions. With respect I agree with His Honour that where many charges are pending against an accused, the sensible, convenient and usual approach, is for the Crown to present an indictment or indictments, and to consent that the other offences may be taken into account. I consider that this should normally be done. An appropriate note may be made on the records and any subsequent antecedent reports. However, if there is any good reason why it is desirable that multiple convictions be actually recorded, I can see no warrant for preventing the Crown's proceeding in the fashion

(1) Unreported judgment No. 641 of 15/9/1971.

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it has done here. It appears to me undesirable that it should have done so in this case. (I may instance the difficulty that arises from preparing on circuit, a warrant of commitment which contains numerous details.)

However, what is the Crown to do where, as frequently happens in Papua New Guinea (as contrasted with Australia), the accused, or his legal adviser does not wish other matters to be taken into account?

I had some reason to consider such a situation early this year (Reg. v. Johnathon Buruap Emwas, 16th February, 1973, Lae). That accused had been dealt with by Raine J. in March, 1972 on three counts totalling $100 - evidence being given as to thirty-four other charges. He came before Muirhead A.J. in July, 1972 on three further counts totalling $55. That judge considered the Crown's course as verging on persecution, as he considered the thirty-four counts had been taken into account by Raine J. and these other three were associated with them. That accused then came before me in relation to three further counts and twenty-one other counts were taken into account; the lot covering some $2,900 - in respect to which a nolle prosequi had been entered (following Sandra Walsh's case) in May, 1971.

It was urged upon me that I should find myself of the same mind as Muirhead A.J. and should regard that presentation of further charges as crushing. I did not agree - they represented another series of defalcations against other unfortunates at a different period of time. I expressed some sympathy for the Crown authority which may present only three counts in the one indictment, in a situation where the accused does not ask for other numerous pending charges to be taken into account. Having in mind a situation that had occurred in Rabaul in Reg. v. Tyson, I suggested that the Crown might meet such a situation by being prepared to present multiple indictments at the one sittings - that this might produce a more equitable result - in that if the accused did not want them all heard at the one sittings he cannot be heard to complain of delays. In Emwas' case the Court was concerned with lengthy Crown delays and the inconvenience

of dealing with an accused on more serious charges when he had just been released from a substantial term in prison.

However, I did not wish to imply that the actual presentation of many indictments covering a congeries of like offences, over a restricted period (Tremellan v. The Queen (2)) should be regarded as desirable. Where the accused is prepared to plead guilty to one or more charges, and to ask that the (possibly numerous) remainder be taken into account - I would regard it as proper that the Crown should follow that course; and that it could well have done so here.

Solicitor for the Crown : P.J. Clay, Crown Solicitor

Solicitor for the Accused : W.A. Lalor, Public Solicitor

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(2) Unreported Full Court judgment No. FC39 of 10/11/1972.