SUIGA -v- REGINAM

High Court of Solomon Islands
(Ward C.J.)
Criminal Case No. 38 of 1990
Hearing: 22 January 1991
Judgment: 23 January 1991

R. Teutao for the Appellant
J. Wasiraro for the Respondent

WARD CJ: The appellant pleaded guilty at the Central Magistrates Court to one count of conversion and was sentenced to two and half years imprisonment.

He now appeals against that sentence on the one ground that the sentence is excessive.

The appellant had operated a bank agency for the National Bank of Solomon Islands in South Malaita since late 1985. He received a quarterly commission and was required to submit monthly returns. The last return he submitted was on 28th February 1989 and it showed a balance of $6,683.21.

When no further statement was sent, the bank decided, in August, to investigate. They found the agency closed but were able to obtain the cash box. When that was opened it was found to be empty and examination of the books revealed a deficiency of $6,683.21.

The accused was interviewed in October 1989 and admitted the offence. Despite that, he was not charged until late August 1990.

The court was told that the Bank had been reimbursed by an insurance company and that the appellant had entered into

an agreement with the insurers to pay the sum back at a rate of $150 per month.

The accused is a first offender, married with a number of children and working in a responsible job that yields $400 p.m.

The learned magistrate stated:

> "This is obviously a very serious offence involving a large amount of money and a serious breach of trust between principal and agent. The money was taken purely to attempt to further the accused's political career and there is no justification in terms of extreme poverty or hardship. In the circumstances the offence itself clearly merits a substantial custodial sentence. ..... I have considered carefully whether the factors could enable me to suspend all or part of the sentence. Regrettably I have come to the conclusion that they cannot. This type of offence is endemic. This is a particularly serious example of it and ..... I find that the duty of the court is to pass an immediate custodial sentence."

At the appeal hearing, Mr Teutao asked to call the appellant to tell of an event that occurred after sentence. No additional ground had been filed relating to this but I felt I should hear the evidence and then decide whether it was relevant.

The evidence was that the appellant's 11 year old son had been in hospital suffering from cancer since March 1990. Two days after the appellant was sentenced, the boy was discharged because the treatment was not working and he died in his village about a month later.

I have considerable sympathy for the appellant. The death of his son and his inability to attend to him in his last few weeks or to attend his funeral are a terrible extra burden on top of the punishment he already has to bear.

It appears that, in this case, the appellant did not instruct his counsel on his son's condition at the time and so

it was not mentioned at the lower court. However, such matters known at the time of trial and not used cannot later be considered. The sad death is, of course, a fresh matter but I do not feel such an event happening after sentence can change an otherwise correct sentence into an incorrect one.

The appellant also suggested that this sentence was too harsh if compared to the case of Jones (37/90). I have previously stated that comparison of sentences is not likely to be helpful because of the differing factors taken into account. The Jones' case had a number of special features relating both to the offence and the offender and also the fact that the sentence was increased on appeal; a factor that usually limits the appeal judge to a considerable extent.

This was, as the learned magistrate said, a serious offence involving a large sum of money with nothing to mitigate the facts of the offence itself. I cannot in any way consider the sentence of two and half years immediate imprisonment was in any way excessive.

However, having said that, no Court can fail to be moved by the events that have happened since. It was accepted by the learned magistrate that the appellant had, before he was charged, demonstrated an intention to repay and generally to lead an honest life. For a man in that position, I have no doubt, the feelings of guilt and remorse are particularly strong and make the term of imprisonment harder to bear. The fact that imprisonment has prevented him attending to his son's sad death must add considerably to those feelings. As I have said the fact he knew of his son's illness at the time of the Magistrates Court hearing should preclude consideration of it by this Court. However, I can accept that his failure to instruct counsel of the fact at the time may have been caused by a reluctance to "use" his son's suffering or because the closeness of his death was not appreciated.

It would clearly be unrealistic to suggest that the magistrate would not have allowed considerably in sentence for those factors had he been able to know the tragedy that was about to strike the appellant's family.

As an act of mercy and with considerable hesitation because the sentence passed by the learned magistrate was perfectly proper for this case before him, I feel I can treat this as an exceptional case and pass a sentence that will give some relief to the appellant.

The sentence is reduced to one of 18 months imprisonment.

(F.G.R. Ward)
CHIEF JUSTICE