

TOELUPE (MERITIANA) v POLICE

Court of Appeal Apia
Morling, Reynolds, Roper
1 February, 3 February 1993

CRIMINAL LAW - sentencing on (22) charges of theft as a servant -
19 year old female.

HELD: Sentence of 9 months imprisonment reduced to 3
months imprisonment to be followed by 1 year
Probation on special designated conditions.

CASES CITED:

- Anita Molesi and Vaipuese Tufuga v the Police (CA 3/92;
Judgment 13 November 1992)

Va'ai for Appellant
Aikman for Respondent

Cur adv vult

This is an appeal against an effective sentence of 9 months imprisonment imposed by the Chief Justice on the 3rd November 1992 after the Appellant then a Bank teller had pleaded guilty to 22 charges of theft as a servant from the Pacific Commercial Bank. The sentences ranged from 9 months for theft of \$1,000, to 6 months, 3 months and 4 weeks for thefts of smaller sums, all terms being concurrent.

The thefts took place between the 3rd April and 12th May 1992, a period of 39 days and the total sum stolen was \$4,650. Of that sum \$3,550 was taken from the account of the Appellant's uncle the Rev. Setoga by forging his signature on withdrawal slips or withdrawing funds without a withdrawal slip. The balance of \$1,100 was taken from an account of a person who apparently had no relationship to the Appellant. None of the stolen money was recovered from the Appellant but full restitution has been made by the Appellant's parents in circumstances which are not entirely clear; and there is no evidence which supports the conclusion that the Rev. Setoga has forgiven his niece. He sought leniency in sentencing.

The Appellant gave no reason to the police for her offending but it is accepted that all the money was spent on "having a good time"; smoking, drinking, frequenting night clubs and hotels and financing new found "friends".

Mr Va'ai submitted that the learned Chief Justice had given too much weight to the deterrent aspect of sentence and paid too little attention to the Appellant's age (She is 19) and her unblemished record to date. Mr Va'ai also sought credit because she had asked "on her own volition to make restitution before she was apprehended by the police". We see no merit in that submission. The truth was that she sought money from her parents to cover up her thefts and finance her passage to America.

Mr Va'ai also called in aid a recent decision of this Court -- Anita Molesi and Vaipuese Tufuga v the Police (CA 3/92; Judgment 13 November 1992). Both Appellants worked as tellers with the Pacific Commercial Bank in Asau. In quite separate incidents Anita stole a total of \$670 by forging withdrawal slips and Vaipuese, \$600. Anita had made full repayment before the loss was discovered. Vaipuese repaid after discovery of the loss, Anita was sentenced to two years imprisonment and Vaipuese 9 months. Both were first offenders, as is the present Appellant.

In the course of its judgment this Court said:

"We feel, as the learned judge felt, the time has come for the seriousness of such offences to be marked by more condign sentences. It must be made clear that anyone who steals from their employer should realise that, even if the money is repaid, the Court will always consider immediate imprisonment.

However, counsel has pointed out that these cases have not generally attracted custodial sentences over the last few years and we consider the sentences in these appeals, therefore, reflect too sudden a change from the level of sentences in the recent past. Our powers of sentence are very limited and the sentence we shall order is not, in our view the most appropriate but we make it clear it is done in these cases only for the reasons stated. This case must be taken as a clear warning that the position has changed and the usual sentence for these offences will hereafter, be prison."

Each sentence was then reduced to one of probation for one year. Mr Va'ai made the point that the judgment in Molesi and Tufuga was delivered after the present Appellant's offending and sentence.

That point is valid, but nevertheless each case must be determined on its own facts, and the facts in the present case differ significantly from the facts in those cases.

The offences committed by the Appellant were serious.

Having regard for the prevalence of this type of offending the deterrent aspect of sentencing is of more than usual importance.

In the Molesi and Tufuga case this Court referred to the circumstance that such thefts frequently stem from demands by the family on a member who has paid employment but that was certainly not a factor in the present case, although peer pressures may have played a part.

On the other hand the Appellant is aged only 19 years and that is an important mitigating factor.

We think that, this is a case where a custodial sentence was proper. However, there are some factors which have led us to conclude that the sentences in respect of the thefts of sums in excess of \$400 should be reduced to three months, which is the period of imprisonment imposed by the Chief Justice in respect of the other offences. Those factors include:

1. The sentences were imposed before this Court's decisions were given in the Molesi and Tufuga cases. We think it not unlikely the Chief Justice would have imposed shorter sentences had those decisions been given at the time he sentenced the Appellant.
2. The Appellant was living away from home without parental guidance when the offences were committed.
3. The Appellant has already spent 17 days in prison pending the granting of bail. The knowledge that she would have to return to prison in the event of her appeal proving unsuccessful must have been a punishment in itself.
4. A period of probation (which we propose to fix) to take effect after her release from prison will be a further deterrent against any further offending.

Accordingly, we make the following Orders:

1. Appeal allowed in part.
2. Sentences in excess of three months imposed by the judge reduced to three months.
3. All other sentences are to stand. They are all to be concurrent and are to run from this date.

4. Upon the Appellant's release from imprisonment she shall be on probation for a period of one year on the standard conditions and on the following further special conditions:
 1. She shall abstain from the use of intoxicating liquor; and
 2. She shall not associate with such person or persons as may be specified by the Probation Officer.