

Criminal Case 710/91 CMC

Date of Review: 16 December 1991

Review Judgement

Muria, J: The accused had been charged with one count of storebreaking and one count of warehouse breaking. On 15 July 1991, the accused pleaded guilty to the charge of storebreaking and he was sentenced to 9 months imprisonment. He pleaded not guilty to the charge of warehouse breaking. On 5 September 1991 the accused was tried and convicted on the charge of Warehouse breaking and he was sentenced to 9 months imprisonment also but the sentence was suspended for one year to take effect at the end of the current 9 months sentence which the accused is actually serving at the present in respect of the charge of storebreaking. Effectively, the learned Magistrate's order means that the suspended sentence is consecutive to the existing sentence of 9 months now being served.

The whole object of a suspended sentence is to avoid sending the accused to prison. Now by making a suspended sentence to take effect at the end of an existing prison sentence will not guarantee that during the period of suspension the accused will not be sent to prison. It may well be that within the period of suspension the accused faces another prison sentence. Such a situation cannot be said to be compatible with the spirit and intention of the 1987 Act which creates the provisions for suspended sentences.

It is therefore in keeping with the spirit and intention of the Act that it would be bad sentencing practice to make a suspended sentence consecutive to an existing prison sentence. In the U.K the Court of Appeal has repeatedly held that it is not a proper sentencing practice to impose a suspended sentence to be consecutive to an effective prison sentence: *Sapiano (1968) 52 Cr. App. R 674; Alan Flanders (1968) 52 Cr. App. R. 676; Baker (1971) 55 Cr. App. R. 182 and Butters and Fitzgerald (1971) 55 Cr. App. 515*. It will be seen from those English cases that under the Criminal Justice Act, 1967, s.39, there is no statutory bar to passing two sentences of imprisonment either concurrent or consecutive, one of which is to take effect immediately and the other of which is to be suspended nor is there any bar as a matter of law upon passing sentences of imprisonment

one to follow the other consecutively the one immediate and the other suspended. But all those cases clearly laid down what must be, not as a matter of law, but a matter of good sentencing practice when the courts are considering suspended sentences.

In Solomon Islands, the Courts should in my opinion bear in mind the principles expounded in those cases when considering suspended sentences. However when the courts are considering passing a suspended sentence on an accused person for an offence and a term of imprisonment in respect of another offence the courts in Solomon Islands are obliged as a matter of law to direct that the suspended sentence be made to run concurrent with the term of imprisonment. This is expressly laid down in S.43A(5) which states:

*"(5) where a court passes a suspended sentence on an offender in respect of an offence and a term of imprisonment in respect of another offence the courts shall direct that the suspended sentence be concurrent with the term of imprisonment."*

The above provision is mandatory and courts must, not only as a matter practice but as a matter of law observe.

In the present case, the learned Principal Magistrate imposed a suspended sentence with the effect of making it consecutive to the sentence which the accused is presently serving. That sentence is not only contrary to spirit and intention of the Act and the good sentencing practice as laid down the cases cited above but it is one which would seemed to be clearly not in accordance with S.43A(5) of the Act.

Thus by my powers under Section 50(1) of Magistrates Court Act, I order that the 9 months suspended prison sentence imposed by the Magistrates Court on 5 September 1991 be made concurrent with the sentence imposed on 15 July 1991.

Order accordingly.

(GJB Muria)

J U D G E