ANNETTE QILA V. REGINA

High Court of Solomon Islands

(Palmer J.)

Criminal Case No. **19 of 1995**

Hearing: **2/8/95**

Judgment: **2/8/95**

P. Lavery for Appellant

DPP for Crown

PALMER J: The Appellant was convicted in the Magistrate's Court on a guilty plea to a charge of Burglary, contrary to section 292(a) of the Penal Code. She now appeals on two grounds: (i) that the learned Magistrate failed sufficiently or at all to take into account the mitigating factors in the offence, and (ii) that the learned Magistrate imposed a sentence which was inconsistent with other offenders in similar circumstances. I will deal with the second ground first.

The submissions of learned counsel do not in my view dispute that the imposition of a custodial sentence in the circumstances described before the learned Magistrate was wrong in principle, or inappropriate. The offence of Burglary is classed as a very serious offence, carrying a maximum penalty of life imprisonment, and therefore, even first offenders must expect a custodial sentence. I do not need to go into detail as to why it is classed as a very serious offence, but the learned Director of Public Prosecution did allude to some of the reasons in his submissions; such as disturbing the peace and quiet of the inhabitants at night.

Mr Lavery however submitted, that the sentence of 9 months imposed, may have been inconsistent with

other offenders in similar circumstances, making this point reservedly, in view of his relative experience of sentences for such offences within the township.

With respect, I see nothing wrong about the length of time imposed by the learned Magistrate as the appropriate sentence that this offence, in the circumstances described, warrants. A first offender would normally expect to get a custodial sentence ranging from 9-18 months, depending on the circumstances presented before the court. The sentence therefore cannot be described as excessive, inconsistent, or "surprising". The second ground raised therefore must be dismissed.

The first ground raised however, does contain some merit.

Although the offence is not unusual, the gender of the offender is unusual for this type of offences. I do not know what the statistical figures in other jurisdictions would be like as to the gender of the offenders, in this class of offences, but in this jurisdiction, it would appear to be few and indeed far between. I do not know whether the appearance of this Appellant before the Courts on such an offence signals a new trend of offenders, but definitely, the unusualness of this case must certainly arouse a more cautious approach, to the personal mitigating factors of this Appellant.

On one hand it is unfortunate that she was unrepresented in the Court below; but who would blame the learned Magistrate for taking a perfectly lawful and proper approach in dealing with this Appellant, for her behaviour in failing to appear before the court, not once, but twice, and especially when an adjournment of at lease three weeks, had been granted to enable her to get a lawyer to represent her. She not only failed to appear on the adjournment date, but also failed to get a lawyer. Such actions are inexcusable. However, having said that, I do take note of the difference that a legal representative may have, in better articulating before the court. her personal mitigating factors and thereby enabling the court to deal with her case more fully.

Mr Lavery has sought to submit that the lower court failed to take adequate account of her mitigating point raised, that the victim was known to her, that she had no reason to commit the offence, and that she did it simply to spoil him. Unfortunately, no further details were provided as to the proximity of the victim and this Appellant's relationship, until the hearing of this appeal today. It now transpires that the Appellant's actions were prompted from what can be described as, a lover's reaction to being hurt or cheated upon by the victim. It was revealed in the appeal hearing, and this has not been challenged, that both persons had had an intimate relationship just prior to the break-in and that the Appellant had at one stage moved in with the victim. At some stage, it appears that the victim then preferred another partner to her and that this was the cause of the grievance and spite.

It is my view that had all these added details been raised before the learned Magistrate, that he may then have seriously considered the question as to whether to suspend the prison sentence or not.

Mr Mwanesalua concedes that the above added details may have acted in favour of a suspended sentence.

I must add a word of caution here. Questions of motive must be treated with great care. It is possible that an offender may come up with a heart-breaking motive for the simple purpose of making a ploy for leniency. The courts therefore must continue to guard against such abuses and excuses, and continue to be vigilant, in detecting and separating the genuine from the false.

As I said earlier, this is an unusual case, and in that regard, I am more inclined to accept what has been submitted on her behalf as true and correct, and weigh in her favour, as more of a silly prank, and that therefore the risk of re-offending is minimal.

When the above factor is weighed together with all other relevant mitigating factors; as to her youthfullness, her cooperation with the police, her remorse shown by way of a guilty plea from the beginning, and that all the property have been recovered, I am satisfied that the appeal should be allowed to the

extent that the sentence be altered to allow the Appellant to remain in prison right up to 9 a.m. on Friday, 4th August, 1995 and for the remainder of the prison sentence of 9 months to be suspended thereafter for a period of 12 months.

ORDER: **That the Appellant be released from prison as from August 4, 1995 after 9 a.m.**

A. R. PALMER
JUDGE