ALOYSIUS VOTU –V- REGINA

HIGH COURT OF SOLOMON ISLANDS
(PALMER ACJ)

Criminal Appeal Case No. 19 of 2002

Hearing: 15th February 2002
Judgment: 15th February 2002

Appellant in person
Francis Mwanesalua (Director of Public Prosecutions) for the Crown

Palmer ACJ: This is an appeal by the Appellant, Aloysius Votu against sentence on the ground that it is too long. Appellant raised three grounds in his appeal:

(i) that he was a student of Waimapuru National Secondary School at time of commission of offence and that he needed to return to school when school commences;

(ii) that he was a first offender; and

(iii) that he was unrepresented in court.

At the hearing, Appellant explained to the Court that his lawyer was not able to attend the hearing as she was sick. I declined to grant adjournment however as I felt the matter was simple and straight forward enough for the court and the parties to deal with in the absence of a legal representative of the Appellant. I took this view, as the ground for appeal was not based on any complicated issue of law. It simply revolved around the question whether the sentence imposed was manifestly excessive.

The Court can interfere with the magistrate's discretion where the magistrate for instance had acted on a wrong principle, or had overlooked or understated, or overstated, or misunderstood some salient feature of the evidence *(Skinner v. The King (1936) 16 CLR 336* followed as applied in *Saukoroa v. Regina (1983) SILR 275* and *Berekame v. Director of Public Prosecutions (1985/1986) SILR 272).*

The learned Director of Public Prosecutions in his submissions before this Court pointed out that whilst the six months sentence of imprisonment was not manifestly excessive there was room for having the sentence reduced if it had been made known to the presiding magistrate that the Appellant was a student and that a much longer sentence may affect his studies. It was conceded this fact was not made known to the magistrate during the hearing itself. Having considered the matter, I too agree that whilst I recognize there is nothing wrong about the sentence of six months imposed and that it was correct in all respects, had the fact been made known to the presiding magistrate that the Appellant was a student, it is quite possible the magistrate may have imposed a shorter sentence. In the circumstances it seems only appropriate that I exercise the Court's discretion and intervene. I am satisfied, a short sharp sentence would have achieved the required effect on the Appellant, jolting him into reality that whilst things might appear on the road not to

be normal and that there appear to be some vehicle users and drivers getting away with traffic offences, that does not mean one can go out and deliberately break the traffic laws. The seriousness in the offence, driving whilst disqualified lies in the element of defiance attributed to such an offender; that unless there are special circumstances, a custodial sentence should be imposed. Due credit must be given to the vigilance and alertness of Traffic Officer Charles Aiwosuga (P/C 669) who prosecuted this Appellant in the court below on 27th November 2001 and took time to explain to this Appellant after the court hearing, the effect of the court order. The Appellant therefore had no excuse. He was rightly convicted and sentenced to prison.

In the course of the hearing, the learned Director of Public Prosecutions brought to the attention of this Court what appears to be a manifest error of law on the face of the record, in respect of the order imposing disqualification for the offence of driving whilst disqualified, to be consecutive to the original order of disqualification for six months. Learned Counsel expressed concern that this may have been a wrong application of law. I agree. Any order of disqualification, whether it be discretionary under s. 29(2) or obligatory under s. 29(1) of the Traffic Act, must commence to run from the moment it is pronounced (see R. *v. Higgins [1973]* R.T.R. *216;* R. *v. Bain [1973]* R.T.R. *213* and R. *v. Meese [1973]* R.T.R. *400).* The order of disqualification requiring that the disqualification period was to run consecutive therefore must be quashed and made effective from date it was imposed.

ORDERS OF THE COURT:

1. **The sentence of six months imprisonment imposed by the Magistrate Court on 29th November 2001 in CRC 687/CMC in respect of Aloysius Votu is quashed and substituted with a sentence of three months imprisonment.**

2. **The order of the Magistrate Court dated 29th November 2001 requiring that the disqualification for 18 months was to be consecutive to the original order of disqualification is also hereby quashed and substituted with an order that the said order for disqualification of 18 months is to commence on date it was pronounced, that is, with effect from 29th November 2001.**

THE COURT.