

Magu v R [1980] SBFJCA 2; 1980-1981] SILR 40 (27 June 1980)

[\[1980-1981\] SILR 40](#)

IN THE FIJI COURT OF APPEAL FOR SOLOMON ISLANDS

Criminal Appeal Case No. 48 of 1979

MAGU

-v-

R

Fiji Court of Appeal
(Marsack Speight and Spring JJA)
Sitting as Court of Appeal for Solomon Islands
Criminal Appeal No. 48 of 1979

June 5 1980
Judgment: 27th June 1980

Criminal Law - sentence - Position of Trust - abuse of position of trust - status of accused within the Public Service - theft by a Public Servant in the course of his duties. Criminal Law - sentence - Disparity of sentence - duty of the Court to exercise a degree of consistency Criminal Law - sentence - mitigation - Restitution after sentence but before hearing of appeal.

Facts:

The Appellant, a clerk in the employment of the Ministry of Education and Cultural Affairs, was sentenced following a plea of guilty, before the High Court of the Solomon Islands (Cooke CJ) on August 29 1979 to three years imprisonment on two charges of forgery and two charges of uttering with three other offences of each kind taken into consideration, arising out of misuse of cheques handled in the course of his employment. The total proceeds of the crimes amounted to \$377.83.

Held:

In considering the question of the appropriate sentence for a convicted person the Court should have in mind that, notwithstanding the facts that a disproportionately low sentence in one case is not ground for reducing an otherwise correct sentence in another case, a sentence should not be heavy and out of proportion with a majority of sentences in comparable cases.

For the Appellant: E Vula
For the Crown: D Williams

Reported by: D. Crome

Speight JA: Appellant pleaded guilty in the High Court of Solomon Islands on 28th August 1979 to charges relating to misuse by him to two cheques for \$108.30 and \$91.40 respectively. He had been employed by the Ministry of Education and Cultural Affairs as a clerk and his duties included the distribution of pay cheques to school teachers.

In the instant case he misappropriated the cheques in September and November 1977 and instead of forwarding them to the teachers entitled he forged their signatures on the cheques and cashed them at a local store. Hence the charges - two of forgery and two of uttering. He did the same in respect to three other cheques for \$98.10, \$40.01 and \$40, 02. These were taken into consideration. The total proceeds obtained were \$377.83.

He was sentenced by Cooke C.J. to three years imprisonment on each, concurrent. In his judgment the learned Chief Justice referred to the abuse by the prisoner of his position of trust, the difficulties encountered by the teachers as a result of the crimes, and the failure to make restitution.

Appeal is now made against severity of sentence. In his submissions to this Court Mr Vula for the appellant developed certain matters which were not all before the Court appealed from. First he was able to say that full restitution has now been made. More particularly he drew attention to a number of other sentences imposed in the Solomon Islands for like offences. Reference can be made, without detail, to a few of these:

Ray Mano	Solomon Islands	October 1979
Daniel Nahusu	"	September 1979
Raymond Aumae	"	September 1979
Kendrick Kumana	"	November 1979

These cases were mostly for substantially larger sums and were all by employees - some in positions of higher status than appellant - vis. bank tellers. Nahusu who made many forgeries was also sentenced to three years for total defaults of some thousands but the others received lesser terms. Of some note is the case of Kumana who stole \$2,800 from his employer. He was sentenced by the Principal Magistrate to two years six months' imprisonment, but on appeal Davis C.J. reduced this to eighteen months.

Although counsel did not mention the matter in his oral submission, this Court had before it on the same day the case of Frank Kere, also on appeal from the High Court of Solomon Islands. He was sentenced to nine months imprisonment, plus a fine of \$221 for a number of offences of theft from his employer, of sums totalling \$471.

Mr Williams who appeared on instructions from the Director of Public Prosecutions of Solomon Islands conceded quite fairly that the sentence under review was out of line with those imposed in other cases of a like nature, and suggested that the usual scale was between nine months and two years.

The principles relating to disparity are well known. Where one prisoner has received a sentence which is disproportionately low, that is no ground for reducing a proper sentence on another. But where it is shown that the sentence under review is very heavy and out of proportion to the majority of punishments for comparable offences it is the duty of the Court to ensure that there is a degree of consistency. In comparable cases the level of punishment to be meted out should not ebb and flow in a marked way otherwise there will be room for prisoners who have been heavily and disproportionately sentenced to have a legitimate grievance, and this encourages resentment and lack of confidence in the judicial system among the public at large.

In our view it has been demonstrated that this sentence was manifestly excessive and in all the circumstances the appropriate sentence is eighteen months' imprisonment. To that extent the appeal is allowed and the sentence varied accordingly.

