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IN THE SUPREME COURT OF NAURU
(APPELLATE JURISDICTION)

CRIMINAL APPEAL NO. 1/2000

BETWEEN : **B. J. MENKE**

APPELLANT

AND : **DIRECTOR OF PUBLIC PROSECUTIONS**

RESPONDENT

CRIMINAL APPEAL NO. 2/2000

BETWEEN : **PAUL HUBERT**

APPELLANT

AND : **DIRECTOR OF PUBLIC PROSECUTIONS**

RESPONDENT

Date of Judgment : 4 May, 2001
Date of Hearing : 15 March, 2001
D. Gioura for Appellants
D.P.P. for the Republic.

DECISION ON APPEAL

In this Appeal, there were two Appellants, B. J. Menke and Paul Hubert.

Before the Resident Magistrate, His Worship Mr. Saksena, on 11 January 2000, both Appellants pleaded guilty to two charges namely,

1. Person found in a dwelling place.
2. Stealing.

Each was an offence under the Criminal Code Act (Queensland) 1899, and the Resident Magistrate sentenced both Appellants to be imprisoned for one month with hard labour on each of the two charges. The sentences were to be served concurrently.

The Appellants appealed on the ground of severity of

sentence.

Mr. Gioura, on behalf of the Appellants, emphasized to the Court the youth of both, Hubert sixteen years and Menke seventeen, and that for each Appellant it was a first offence.

He further stated to the Court that he had discussed the matter with the parents of both Appellants and had invited the Appellants to seek advice of parents and attend church regularly. He asked the Court to note that the Appellants had behaved themselves since the incident, the subject of the charges, and that they had not been in trouble with the police since the date of the incident.

DECISION ON APPEAL NOS. 1/2000, 2/2000 AND 1/2001.

In determining this Appeal, the Court stated in Criminal

Appeal No. 1/2001 that the Appeals of each of the four Appellants would be determined together. The four acted in concert on the night in question, entered a dwelling house and stole goods. Quadina damaged property by knocking the door down by which all four gained entry and stole the goods.

Apart from Quadina, who had to face the additional charge of damaging property, all four were sentenced to one month on each charge, the sentences to be served concurrently.

The question was whether this was a manifestly excessive sentence to impose on each of the Appellants.

Although Mr. Aingimea compared the sentences with those that had been imposed on similar offences in the past three years in which he pointed out not any had been custodial, the Court notes that the sentences in this case were imposed by two

Magistrates much experienced in Nauru who were coping with an increasing criminal problem. The DPP stated to the Court and this was not challenged that the crime of breaking and entering in its general classification was becoming far more prevalent than it had been and that some sentence that could effectually deter others was called for.

The problem has been that, up until this moment, alternatives were not sufficient to influence deterrence or assist rehabilitation. A mere fine, or bonds have not proved sufficient so that the Magistrates properly looked really at the only alternative available which was a custodial sentence.

However, very recently since these sentences were imposed, the Nauru Government under the terms of the Criminal Justice Act 1999 has seen fit to take steps to set up a Probation Service and introduce Community Service Groups.

The object of such a development is not only to introduce an alternative to custodial sentencing, but to develop a judicial sentencing system organised and controlled which will both educate, train and work convicted persons towards attitudes of family, community and civic responsibility. It will be no soft option and depending on the Court may entail arduous community work. Failure to observe the strict requirements of the Community Service Order will result in the application of custodial sentences by default. A convicted person may be the subject of a fine as well as Community Service Order.

The Court would hope that maximum community support is given to the very recent development in optional sentencing and its clear value to both youthful and first offenders.

The Court believes that it is the appropriate course to adopt in the case of the four Appellants. It will therefore vary

the sentences imposed from one-month sentence to be served concurrently to a Community Service Order for three months on each charge to be undertaken concurrently. The penalty for damaging property upon which Quadina was fined $500 will not be disturbed.

Each Appellant will forthwith be under the control of the Acting Chief Probation Officer who will commence immediately the Community Service programme. Under the order, the Acting Chief Probation Officer may report to the Court any default prior to completion of the term of the order and in any event will furnish a report at its completion. In the event of a default by one or other of the Appellants, the Court may impose the original sentence.

ORDER

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1. **B. J. MENKE**

Charge One - Person found in a dwelling house without lawful excuse.

The sentence of one month imprisonment with hard labour is deleted and, in substitution, a Community Services Order of three months, in default, one month imprisonment with hard labour.

Charge Two - Stealing

The sentence of one month imprisonment with hard labour is deleted and, in substitution, a Community Services Order of three months, in default, one month

imprisonment with hard labour, the Community Service order to be served concurrently with the sentence on Charge One.

2. PAUL HUBERT

Charge One - Person found in a dwelling house without lawful excuse.

The sentence of one month imprisonment with hard labour is deleted and, in substitution, a Community Service order of three months, in default, one month imprisonment with hard labour.

Charge Two - Stealing.

The sentence of one month imprisonment with hard labour

is deleted and, in substitution, a Community Services order of three months, in default, one month imprisonment with hard labour, the Community Service order to be served concurrently with the sentence on Charge One.

The Court further orders that until the Acting Chief Probation Officer has in place a programme for the community services order, the Appellants will remain on bail;

And further orders that notification of the commencement of the programme be given by the Registrar and served on each of the Appellants, who will be required to report immediately to the Acting Chief Probation Officer and the Probation Officer.

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8/5/2001
S. B. ABAYAKOON
REGISTRAR, SUPREME COURT

CHIEF JUSTICE