

**PAULA NAUMA v STATE**

HIGH COURT — APPELLATE JURISDICTION

5 SINGH J

6 September 2002

[2002] FJHC 171

10 **Criminal law — sentencing — appeal against sentence — juvenile offender — multiple offences — totality principle — Juvenile Act s 30(3).**

15 Paula Nauma (Appellant), a juvenile, was sentenced for multiple offences committed over a period of 8 months. He pleaded guilty and was sentenced to a total of 9 years and 11 months' imprisonment. The Appellant submitted in his appeal that the sentence was against the totality principle of sentencing.

20 **Held** — (1) The essence of the totality principle is that when an accused is sentenced for several offences or where a prisoner is serving multiple sentences, the court must not only consider each offence individually but also consider the offender's overall culpability and decide the appropriate sentence. The court therefore must not mechanically aggregate the individual sentences which would otherwise be appropriate for each offence as this is likely to add up to an excessive overall sentence. The sentencer must stand back and consider the overall total sentence to ensure that it reflects the overall criminality for all the offences and that it is not unduly excessive.

25 (2) The Appellant is a young offender. The interest of the society is to see that he becomes a good citizen. Rehabilitation is the prime aim in sentencing such offenders. He pleaded guilty. An unusually long sentence would have a crushing effect on the Appellant.

Appeal allowed.

No cases referred to.

30 Appellant in person

*P. Solanki* for the Respondent

**Judgment**

35 **Singh J.** This appeal deals with the issue of sentencing a juvenile for multiple offences committed over a period of 8 months. The appellant Paula Nauma appeared in Lautoka Magistrate's Court in respect of a number of offences on 22nd March 2002 and pleaded guilty and was sentenced to a total of 9 years and 11 months' imprisonment.

40 The learned magistrate had before him 12 files in respect of the accused and there were 17 counts. There were five counts of Housebreaking, Entering and Larceny, one of School Breaking, Entering and Larceny, four counts of Burglary, four counts of Larceny in Dwelling House, one count each of Assaulting Police Officer in Due Execution of his Duty, Resisting Arrest and Assault with Intent to

45 Rob.

The total amount of property involved in all the offences was \$29,407.50. Of this only property worth \$1947 was recovered. A substantial amount of property was not recovered and is unlikely to be recovered. The Appellant's offending extended over a period of close to 9 months from 5th June 2001 to

50 27th February 2002. The majority of offences involved breaking into homes either during day or night while the occupants were away from home. There was

a definite modus operandi here. The Appellant must have kept an eye on movements of occupants and then targeted vacant homes. Even burglar bars were removed to gain entry. In seven cases he was accompanied by someone else.

5 The Appellant in his appeal submits that the sentence of 9 years and 11 months offends against the totality principle of sentencing. The State counsel conceded that such a sentence was harsh and excessive. However, he submitted that given the nature, circumstances and the extent of criminality involved, a custodial sentence was called for despite the fact that the Appellant was a juvenile at the time of offending.

10 I agree with the responsible stand taken by the learned State counsel. The Appellant was born on 6th July 1985 so at the time of the commission of the offences he was below the age of 17 and hence a juvenile under the provisions of the Juvenile Act. Section 30(3) of the said Act reads:

15 *A young person shall not be ordered to be imprisoned for more than two years for any offence.*

A young person as defined in s 2 of the said Act is one who has attained the age of 14 years but not attained the age of 17 years.

20 The maximum sentence of imprisonment for any one offence a court can impose on a juvenile is of 2 years. This maximum would of course be reserved for the very worst or heinous type of offending. However, where a juvenile has committed a number of offences it would still be correct, in appropriate circumstances, to sentence him to beyond 2 years by imposition of consecutive sentences.

25 The Appellant was sentenced for multiple offences. As such the totality principle of sentencing is important. The essence of this principle is that when a court is sentencing an accused convicted for several offences or where a serving prisoner is to be sentenced for further offence, the court must not only consider each offence individually but also consider the offender's overall culpability and  
30 decide what is appropriate sentence for the offenders overall culpability. The court therefore must not mechanically aggregate the individual sentences which would otherwise be appropriate for each offence as this is likely to add up to an excessive overall sentence. The sentencer must stand back and consider the overall total sentence to ensure that it reflects the overall criminality for all the  
35 offences and that it is not unduly excessive.

However, having said that the court in applying the totality principle must also be careful not to give an impression to offenders that having committed one serious offence, there is little to lose by continuing to offend. The message must be made quite clear that the more crimes an offender commits, the longer the  
40 sentence is going to be. The totality principle is not some form of judicial discount for multiple offending.

Hence the steps to be followed when sentencing an accused person for multiple offences are:

- 45 (1) Consider the aggregate or total sentence which must reflect the overall culpability of the offender and the totality of his conduct.
- (2) When an offender is made subject to more than one sentence of imprisonment, such sentence may be either concurrent or consecutive.
- (3) If concurrent sentences are being imposed, the most serious offence  
50 should receive the sentence which reflects the totality of offending. The length of other concurrent sentences should vary according to their gravity.

(4) Consecutive sentences should only be reserved for offences which are separate and unrelated or where they are totally different types of offending.

5 (5) Where offences are unrelated, consecutive sentences must be proportionate to the totality of the conduct. However, if this will result in a series of short sentences which each individually fails to reflect the gravity of each offence charged, then longer concurrent sentences on a combination of concurrent and consecutive sentences may be used.

10 The Appellant is a young offender. The interest of the society is to see that he becomes a good citizen. Rehabilitation is the prime aim in sentencing such offenders. He pleaded guilty. An unusually long sentence would have a crushing effect on the Appellant.

15 However, there are certain aggravating factors too. A number of people were affected by Appellant's activities. A substantial sum of property was involved. The offences appear to be well planned. Having considered the mitigating factors and the aggravating features and on applying the totality principle I consider a sentence of 3 years' imprisonment as proper for the overall offending.

20 The most serious of the offences is Burglary in Criminal Appeal 83 of 2002 where burglar bars were removed to gain entry and property worth \$5050 was taken.

The appeal therefore succeeds to the extent that the sentence is reduced to 3 years' imprisonment. I sentence the appellant as follows:

25 C/F 83 of 2002 — 2 years' imprisonment on first count, count 2 concurrent to count 1.

C/F 87 of 2002 — Assault with Intent to Rob — 1 year imprisonment consecutive to C/F 83 of 2002

The terms of sentences in other files remains unaltered except they are all to be served concurrent to C/F 83 of 2002 and 87 of 2002.

30 *Appeal allowed.*

35

40

45

50