IN THE COURT OF APPEAL OF

THE REPUBLIC OF VANUATU

APPEAL CASE NO. 2 OF 1986

BETWEEN : CYPRIAN ARU
(Appellant)

AND : PUBLIC PROSECUTOR
(Respondent)

JUDGMENT

This is an appeal by the Appellant, Cyprian Aru, against his sentence of four (4) years imposed by the learned Chief Justice on 14th July 1986, on the ground that it was manifestly excessive.

The Appellant was an Inspector in the Vanuatu Police Force and stationed on the island of Tanna as the Officer-In-Charge of the police station. He was charged with six (6) counts of misappropriating to his own use, over the period from 1st December,1985 to 30th April, 1986, a total amount of 278,000VT, money which had either come into his possession or been entrusted to him in his official capacity as Officer-In-Charge of the police station. He pleaded guilty to each of the six charges. The highest sentence he received was four (4) years on the first count. The other five sentences were three (3) years, one (1) year and three of six (6) months respectively. They were all made concurrent, so that in reality it is the head sentence of four (4) years on the first count which is being appealed against. The amount involved in the first count was 165,000VT.

The particulars relied upon by Mr Rissen, the Public Solicitor, for the Appellant are these:-

(a) that the period of imprisonment was not consistent with other sentences imposed for like offences;
(b) that the learned trial judge gave excessive weight to the fact that the Appellant was a police officer, and a person in a position of trust who abused that trust, and
(c) that the learned trial judge gave insufficient weight to the counter balancing loss of honour, respect and employment opportunity and other matters in mitigation generally.

Mr Rissen made reference in particular to paragraph three (3) of the trial judge's judgment on sentence to support the submission that excessive weight was given to the fact that the Appellant was a police officer. Part of this paragraph is set out for convenience of reference:-

> "This action of the accused I considered to be quite despicable and warranted severe punishment. The courts have to deal sternly with those who abused trust at the expense of others: the greater the abuse of trust implicitly placed in such a person as an Inspector of Police, the greater the need to punish severely and thereby deter others from being tempted to behave in the same way. A Police Inspector who behaved dishonestly brought his profession into disrepute."

Mr Rissen also submitted that the learned trial judge erred in placing too much emphasis on the need for deterrence.

Mr Dickinson, the Public Prosecutor, chose not to address in

.../2

response on the appeal against sentence, but assisted the Court with his personal knowledge and recollection of the ranges of sentences in theft and misappropriation cases before the Supreme Court recently.

In relation to the first particular, the submission that the period of imprisonment of four (4) years was not consistent with other sentences for like offences, no data was submitted for comparative analysis. It is doubtful whether such comparative data would be of much assistance without knowledge of a whole range of surrounding circumstances of a particular similar offence. Nothing more than a mere statement that in recent cases of similar offences, the sentences have generally been between 2 to 3 years is, with respect, of little assistance.

It was further contended by Mr Rissen that too much weight was placed on factors adverse to the Appellant and insufficient weight given to factors in his favour. Remarks of the trial judge in paragraph 3 of his judgment, quoted above, were referred to as indicative of too much weight on adverse factors. It is considered that the concern expressed by the learned trial judge are of matters properly open to a sentencing judge to comment upon. There is nothing in the remarks that are incorrect or ought not to have been said. A police officer who breaches the trust and confidence placed in him by the community at large brings the whole profession into disrepute and causes the public to lose trust and confidence in the police. There is no error in making reference to this consequence.

In the final paragraph of the sentencing judgment the learned trial judge does say:-

."I took into consideration all that was said in his favour but I considered that more is expected of a Senior Police Officer..."

It can be sufficiently assumed that the trial judge took into consideration the fact that the Appellant has much to lose as a result of his conviction and any sentence imposed; the loss of dignity and respect he had enjoyed in the community and so on. It cannot therefore be rightly said that the trial judge did not take into consideration sufficiently factors in the Appellant's favour.

It is a well established and recognised principle that the sentencing power is a discretionary one and so courts of appeal are loathe to interfere with sentences unless it can be demonstrated quite clearly that the trial judge erred. An Appellant must demonstrate clearly that the trial judge either erred in law or in fact in that he gave too much weight to adverse factors against the Appellant and or gave insufficient weight to mitigating factors in the Appellant's favour or that the sentence is so manifestly excessive on the face of it that clearly error in discretion is demonstrated thereby. It is not sufficient basis for disturbing the sentence merely because members of the Appeal Court might themselves have imposed a different sentence.

Turning back to the circumstances of the appeal at hand, it was not contended that the learned trial judge erred in law. It was contended that the comments of the trial judge referred to and quoted were indicative of too much weight being placed on factors adverse to the Appellant, and too little or insufficient weight being given to counter balancing factors in the Appellant's favour. This too, it is considered, has not been clearly demonstrated to be the case at all. Indeed nothing in the comments of the trial judge suggests that inference or conclusion. Finally the contention that on the face of the sentence it is manifestly excessive in that it is inconsistent with

.../3

with sentences for like offences, thus error is inferred thereby, is also not supported and not established.

The end result is that it has not been established that the learned trial judge erred in the exercise of his discretion in imposing the sentence he did. The appeal is therefore dismissed.

Dated at Vila this 1st day of October, 1986.

Mr Justice Williams

Mr Justice Amet