TAMAN, Appellant

v.

TRUST TERRITORY OF THE PACIFIC ISLANDS, Appellee

Criminal Case No. 154

Trial Division of the High Court

Yap District

May 16, 1958

Defendant pleaded guilty in Yap District Court to charge of petit larceny for violation of T.T.C., Sec. 397, and was sentenced to five months imprisonment. On appeal, defendant contended that sentence was excessive since restitution had been made. The Trial Division of the High Court, Associate Justice Philip R. Toomin, held that even if restitution is made by defendant voluntarily comparison with sentences in other cases is illogical.

Affirmed.

1. **Criminal Law—Sentence—Restitution**
   Restitution accomplished by police in locating and seizing stolen goods is not such restitution as entitles defendant in criminal prosecution to special treatment.

2. **Criminal Law—Sentence—Restitution**
   Even if defendant in criminal proceedings leads authorities to stolen property after agreeing to make restitution, this does not necessarily make a case for lighter punishment.

3. **Criminal Law—Sentence—Repeated Offender**
   Defendant in criminal proceedings who is repeated offender can hardly expect same light punishment meted out to first offender.

4. **Criminal Law—Sentence—Repeated Offender**
   Facts of defendant's previous record are presumably before District Court in criminal case as well as facts relative to other defendants who were given lighter sentences in District Court.

5. **Criminal Law—Sentence—Comparison with Prior Sentences**
   Comparison of sentences in two criminal cases involving same offense is illogical unless there is available for examination facts with respect to prior involvement in similar offenses.

6. **Criminal Law—Sentence—Comparison with Prior Sentences**
   Evidence of extenuating circumstances for mitigation of punishment are not sufficiently similar in cases of any two criminal offenses to merit comparison.

7. **Criminal Law—Sentence—Comparison with Prior Sentences**
   District Court is not required to be indulgent to one criminal defendant because, for reasons not readily apparent, it has yielded to argument of counsel on behalf of other criminal defendant in previous case.

TOOMIN, *Associate Justice*

OPINION

This is an appeal from a judgment of the District Court of Yap sentencing the defendant to a penalty of five months' imprisonment upon a plea of guilty to a charge of Petit Larceny.

The larceny consisted of the theft of ten pieces of lumber valued at less than $50.00, from the yard of the complainant. It appeared that the lumber was found on the roof of defendant's home, from which it was removed by the Constabulary on a search warrant. The only point raised on the appeal is that the sentence was excessive, in view of the fact that restitution had been made.

[1] In arguing for a light sentence because of the restoration of the property taken, defendant ignores that the restitution was not accomplished by his act, but that of the police in locating and seizing the stolen goods. This is therefore not such restitution as entitles defendant to any special treatment, since it was accomplished not by his voluntary action, but by the diligence of the police authorities.

[2, 3] But even if the defendant had led the authorities to the stolen property after agreeing to make restitution thereof, he would still not necessarily have made a case for lighter punishment than that adjudged. If, in fact, the defendant were a repeated offender, he could hardly expect the same light punishment meted out to a first offender. The record does not show the offenses attributed to the defendant in the past, but it is stated in the government's brief that he was convicted in 1953, and served a sentence of one year's imprisonment for grand larceny.

[4] Presumably this fact was before the court in imposing sentence in this case. Presumably, also, there were

before the court the facts with respect to the absence of substantial criminal records, on the part of other defendants given lighter sentences by the District Court, in the cases enumerated in appellant's brief.

[5-7] It is therefore apparent, that comparison of the sentences in two cases involving the same offense would be illogical, unless there was available for examination the facts with respect to prior involvement in similar offenses. It will be found that evidence of extenuating circumstances for mitigation of punishment are not sufficiently similar in the cases of any two offenses to merit comparison. Nor is the court required to be indulgent to one defendant, because for reasons not readily apparent it has yielded to argument of counsel on behalf of the other defendant.

Accordingly, this court is unable to perceive any persuasive reason for interfering with the judgment of the District Court in this case, and the same is therefore sustained.