KATONGO v THE PEOPLE (1969) ZR 30 (CA)

COURT OF APPEAL 25

BLAGDEN CJ, DOYLE JA, EVANS J

18th FEBRUARY 1969.

Flynote and Headnote

[1] Criminal procedure - Sentencing - Reasons for sentence - Disclosure unnecessary.

In the ordinary case there is no reason for the trial judge to set 30 out his reasons for imposing a particular sentence.

[2] Criminal procedure - Legal aid - Grant of - Appeals against sentence.

Rarely is a grant of legal aid justifiable in an appeal against sentence.

[3] Legal aid and advice - Grant of - Appeals against sentence.

See [2] above. 35

Collingwood, for the appellant

Chigaga, State Advocate, for the People

Judgment

Blagden CJ: delivered the judgment of the court.

This is an appeal against a sentence of twelve months' I.H.L. and 40 eight strokes of the cane passed on the appellant by the High Court upon his committal thereto for sentence in respect of his conviction before the Subordinate Court Class II Chingola for indecent assault on

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a girl aged seven years. The first observation we would make in regard to this case is that there was no need for the magistrate to commit this case to the High Court for sentence. He had adequate jurisdiction to deal with it himself, subject of course to confirmation by the High Court if sentence exceeded twelve months' imprisonment. 5

The appellant pleaded guilty in the trial court, and the statement of facts which was before the High Court revealed that he indecently assaulted this girl who was aged seven years on the 13th October, 1968. It is true that there was no violence and no actual sexual intercourse, but the child had a very

unpleasant experience and was apparently in 10 the company of the appellant for something over four hours.

The appellant himself is aged nineteen years, and apart from one previous conviction for being drunk and disorderly, has a clean record. Mr Collingwood appearing on his behalf has complained that in sentencing the appellant the learned judge gave no reasons for his decisions. [1] In 15 the circumstances of this particular case, and with all the material before the learned judge clearly disclose in the record, we can see absolutely no reason for his setting out reasons for sentence. Sentence is a matter of discretion, within, of course, any statutory limits imposed in respect of the offence for which the accused person is convicted. Ordinarily with 20 details of the record duly disclosed there would be no reason for the judge to give reasons for his sentence. As I understood Mr Collingwood's argument it was that because the judge has disclosed no reasons, therefore he cannot have taken into account matters which he should have taken into account and might easily have taken into account matters which he 25 should not have taken into account. In our view that is a completely fallacious argument. Just because a judge or magistrate does not state reasons for his decisions it certainly does not follow as a necessary inference that therefore that he has failed to take into account the proper principles nor that he has taken into account matters which he should not. We 30 trust the fallacy of this line of argument has now been fully exposed.

Mr Collingwood has also invited us to give what I understand to be some form of practice direction on the subject. He suggested that reasons for sentence should be given as a matter of natural justice, to achieve rationality and consistency of sentence, and so as to give an accused the 35 opportunity of exercising his right to challenge the sentence. A sentenced person always has that right. So far as natural justice is concerned, in the vast majority of cases matters put before the sentencing tribunal are disclosed in the case record. Where there are exceptional reasons for a sentence then I agree they should be recorded. But in the ordinary case 40 there is no reason to elaborate or state reasons for sentence.

In the present case, in our view, the appellant was extremely leniently dealt with and we have decided against it.

[2] [3] A further point we would make is this: It must be rare indeed for the grant of legal aid to be justifiable in an appeal against sentence. 45 The present case, of its merits, is certainly not such a case. It is, of course,

only fair to add that Mr Collingwood has put forward various arguments regarding sentencing generally, but as my Brother Evans pointed out it is questionable whether these arguments should have been addressed to us. They would appear more appropriate for consideration by the 5 Legislature. In our view this appeal is devoid on merit, and it is accordingly dismissed.

Appeal dismissed

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