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BETWEEN CHRISTOPHER MATHEW LUKI

Appellant

A N D PROBATION

Respondent

Hearing: 12 April 1983

Counsel: Miss Duffy for Appellant
Miss Spain for Respondent

Judgment: 12 April 1983

ORAL JUDGMENT OF HOLLAND, J.

The appellant, Christopher Mathew Luki, appeared in the District Court on 26 November 1982 on a charge that he failed to comply with a condition of his probation in that he failed to report on 23 July 1982. He was sentenced to three weeks' imprisonment. It is submitted to me that the sentence in the circumstances was inappropriate or excessive in that the District Court Judge did not have due regard to the provisions of s.13B of the Criminal Justice Act. It is also submitted that the sentence is now inappropriate in the light of further evidence that he and his wife have joined the Assembly of God and there appears to be some indication that he may have shown some degree of reform.

A breach of probation stands in a special category when it comes to punishment. In the first place an offender such as this who was first sentenced to periodic detention followed by probation was a person where the offence warranted a term of imprisonment. Unless it warranted imprisonment periodic detention was not an appropriate sentence. He has accordingly already received an indulgence from the Court in not having been sent to prison. People who are released on probation must realise that they not only have received an indulgence but if they do not comply with the

conditions of their probation must appreciate that imprisonment must almost inevitably follow. Obviously the provisions of the Criminal Justice Act apply to all sentencing, but in a case such as this where a man has been given an indulgence in not being sent to prison once and fails to comply with probation the provisions of the section can usually have little application. In this case, however, this man not only has failed to comply with the terms of the probation but he has two previous convictions for failing to report to Work Centre when he was released on periodic detention. It may well be that to some extent he is inadequate in coping with the community. It certainly is a fact that if the sentence imposed by the District Court is to be carried out he will lose his employment. That will react somewhat harshly on his wife and children but that is almost always the case. His employment is under a temporary employment scheme for the unemployed and it may well be that if he loses this job he will be replaced by someone who is willing to observe the law.

In all the circumstances I am satisfied that the sentence was not only appropriate but inevitable. The appeal is dismissed. The appellant will be taken into custody and will serve the sentence.

A. D. Holland J.