

IN THE CENTRAL MAGISTRATE'S COURT OF THE SOLOMON ISLANDS.

Criminal Case No. 800/2017

R

Vs

Cecil Pohe

Prosecutor: PC T. Mosese.

Defence Counsel: Mr. C. M. Ruele.

Date of submission: 29th & 30th of August 2017

Date of Sentence: 1st of September 2017.

SENTENCE

Introduction & Brief Facts:

1. Apparently, as a Court Clerk of this Court, you were previously charged and recently convicted for:
 - (i) *Taking vehicle without authority against section 59 of the Road Transport Act,*
 - (ii) *Careless Driving against section 40(1) of the Road Transport Act, and,*
 - (iii) *Driving without a Valid Driving License against section 20(1) of the Road Transport Act.*
2. According to the Police facts which you have admitted, on the 30th of June 2017 at 7:30 pm, you have driven away a White Toyota Car, Registration No. G -3601, allocated to the Central Magistrate's Court Office without the consent of the said office.
3. Later, around 11:00 pm to 12:00 pm of the same night, whilst driving the same office G - Plate vehicle eastward, at high speed, along the Tandai High Way, without due care and attention, you collided with the rear of another easterly bound vehicle that was traveling in front of you.
4. As a result of the collision, the said Court Office G -Plate vehicle had sustained a bent and dented front bumper and bonnet. Upon investigation, the Police had found out that you had no valid driving license and that you had driven carelessly and had taken the vehicle without due authorisation. Hence, you were charged accordingly.

The Law:

5. In sentencing you, the *Road Transport Act* is very clear on the maximum penalty for such offences that you have committed.
6. According to the above Act, for taking vehicle without authority, on a conviction by the Magistrate's Court, the maximum penalty has since 2009 increased to \$3000-00 and/or 3 months imprisonment. And the maximum penalty for Careless Driving and Driving without a Valid License is \$5000-00 and/or 6 months imprisonment respectively.
7. With the above prescribed maximum penalties mostly used as guidelines, the usual penalties imposed by the Magistrate's Court for such offences that you have committed mostly range from fines to imprisonment.
8. In the case of *R vs Daniel Hunikira – CC 360/2013*, apart from driving under the influence of liquor, the defendant was also convicted after trial for careless & inconsiderate driving and was sentenced to a fine of \$2,200-00.
9. The aggravating circumstances of this case includes that the defendant at the time of the offending was a Police Officer who grossly abused his entrusted responsibility to wisely use and properly care for a G-Plate vehicle. Also the same defendant was intoxicated at the time of the offending and the vehicle he was driving was badly damaged or written off as a result of the accident. And his mitigating features includes that he has 5 children and 16 grandchildren with some attending school and most residing with him and relying on him for sustenance. Also, he was a person of pervious good character and had held various senior positions within RSIPF including a stint as a Provincial Police Commander during his 35 years of service.
10. Another similar case is that of *R vs Rofen Samo – CC 612/2016*. Amongst other counts, (including Reckless & Dangerous Driving, Using Unlicensed and Uninsured Vehicle) the defendant had also pleaded guilty to Taking Vehicle without Authority and Driving without a Valid License. And for Taking Vehicle without Authority, he was sentenced to 3 months imprisonment and 2 months imprisonment for Driving without a valid license.
11. The defendant in the above case is a first offender and was married with 3 children. And he had also paid \$500-00 as compensation to the complainant and was expressively remorseful for his actions. However, he was imprisoned given the serious aggravating features, (including driving at high speed, hitting a pedestrian and rendering her unconscious and sustaining injuries and escaping from an accident) and the gross disregard of the law and safety of other road users on his part, (plus the prevalence of such offending).
12. The other similar case is that of *R vs Garry Kere – CC 932/2016* in which the defendant had pleaded guilty to Dangerous Driving, Presence of Alcohol in Person's Blood, Driving without a Valid Driving License and Taking Vehicle without Authority. And for the Driving without a valid

Driving License, he was sentenced to 2 months imprisonment and 3 months imprisonment for Taking Vehicle without Authority.

13. The aggravating feature of this case includes that the defendant was extremely drunk at the material time and was unfit to drive as a result. Also he was driving at very high speed at the time of the accident and 3 passengers of the bus he had collided with had sustained injuries as a consequence. And both the RAV 4 and Bus he had collided with had also sustained extensive damages, (as well as the vehicle he had driven at the material time). And the mitigating feature of the same case includes; early plea, first offender, very remorseful for his actions.
14. Obviously, the main intention of the Parliament, as of 2009, in increasing the penalties of traffic offences, (including those that you have committed) is to have an updated law that can be used to adequately and effectively deal with careless and inconsiderate drivers, (who have no regard for the law, the safety of other road users) to ensure public safety on our roads is maintained at all times.
15. And from the sentencing remarks and mostly deterrence sentences passed by this court in the above cases, it is apparent that this court has been trying its best to give effect to the true intention of the parliament in ensuring that our roads are always safe for drivers, passengers, pedestrians and the public alike.

Crucial Issue, Factual Circumstances/Nature of Offences & Sentencing Trend:

16. With the above in mind, coming back to your present case, the critical question that needs to be determined is the appropriate penalty for the traffic offences that you have committed.
17. In relation to the above, the relevant factual circumstances out of which you have offended are already set out in paragraph 2, 3 and 4 of this sentence. And the natures of the offences with which you have been charged are also already outlined in in paragraph 1 above. As such, I do not think that I should repeat them here.
18. Also it is to be noted again that the sentencing trend, since the 2009 increase in the maximum penalties, (for the offences such as those you have committed) has been mainly fines and imprisonment terms.

Aggravating Factors:

19. In my view, especially based on the limited Police submission and the agreed facts tendered, the aggravating features of your offending were;
 - a) That you have no regard at all for the law, the safety of the other drivers and passengers of the other vehicles and pedestrians using the road when you drove without due care and attention at high speed, (and collided with the back of the vehicle in front of you on the easterly bound lane). And

had you been more attentive in your driving at that material time, you would have easily avoided the accident by carefully overtaking the vehicle in front you using the westward lane which was mostly empty at that time.

- b) Also that you have no regard for the law at all when you drove the vehicle without a valid driving license, and;
- c) That you were a court clerk when you committed these offences and should have known better and should have exerted a lot of restraint from breaking the law as you did. Instead you have mostly failed yourself and, in the process, demeaned or reduced your status to being a criminal.
- d) And, moreover, you have no regard at all for this court and the government of this nation by taking the Magistrate's Court issued G-Vehicle without due care and authority and ended up with an accident and causing damages to the said office vehicle.

Mitigating Factors:

20. Mostly, from your Lawyers submission, I take into account the following mitigating factors:

- a) That you are married with 2 children, aged 1 year old and 6 years old respectively and given that your wife is still unemployed, you have been, all along, the sole bread winner of your family for their daily survival, (including payment of school fees and other expenses).
- b) That despite being suspended as a Clerk in relation to this case, you are still drawing a full salary of \$774.88 per fortnight. However, taking into account the present high cost of living, especially here in Honiara, the said amount is still very limited to rely on.
- c) That you have pleaded guilty at the first available opportunity and this not only demonstrates your honesty but also acceptance of your guilt and responsibility and that you are prepared to face the consequences of your actions.
- d) And moreover, your early plea had save this court, the Police and even yourself the time and resources that should have been spent had this matter goes to trial.
- e) Also that you are deeply remorseful and clearly regretted your actions and promise not to re-offend which places you as a potential candidate for rehabilitation.
- f) Finally that you have no previous conviction which shows that you have been a good and productive member of your community and citizen of this country for the past 34 years or until this offending.

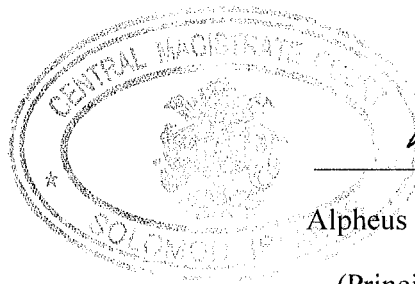
Consideration of the Appropriate Sentence:

21. In considering the appropriate sentence to be imposed upon you, on one hand, given the aggravating features, (and especially the prevalence of the taking vehicles without authority, careless & inconsiderate driving plus driving without a driving license) I am of the view that imposing a deterrent sentence against you is most appropriate in this case.
22. In other words, this court is obliged to impose a sentence that will not only deter you from re-offending but also warn other public servants out there from abusing and damaging government properties the way you did, (and also at the same time to also ensure public safety on our roads is maintained at all times).
23. However, notwithstanding the above, on the other hand, I must also consider that you have taken an early guilty plea, that you have no previous conviction and that you are being very remorseful for your actions, (which indicates a high possibility on your part to rehabilitate from this ordeal) and that you should be given the chance to do so.
24. Furthermore, in my view, your case is also less serious in nature compared to the *R vs Hunikera*, *R vs Samo* and *R vs Kere* which have attracted imprisonment terms.
25. Obviously, the above cases, amongst other factors, also involves either reckless and dangerous driving, (or hitting and injuring pedestrians and passengers) and consumption of liquor plus serious damage to the vehicles involved.
26. However, with your present case, there is no indication if there is any injury sustained by the occupants of the vehicle that you have collided with. Also there is no indication if the vehicle you have collided with had sustained any damages. And apart from sustaining a bent and dented bumper and bonnet, there is no indication if the office car you have driven had also sustained any serious damages. Moreover, there is also no indication if you were drunk at the time of offending.
27. Apparently, the only standout aggravating features of your offending is that being a Court Clerk you have no regard for the law, the safety of the public using the road. And, moreover, that you have no regard for this court and especially the government who owns the office vehicle involved.
28. Given the aggravating and mitigating circumstances or merits of your case, (and with the view to impose a deterrence but also rehabilitative sentence in mind) I believe that a fine is the most appropriate sentence to be imposed against you for the offences that you have committed.
29. I note that your Lawyer had asked me to also consider discharging you under section 35 of the Penal Code. However, with due respect, given the seriousness and aggravating circumstances of your offending and with the view to also send out a deterrence message, I do not think that discharging you without entering a conviction would be the appropriate sentence in this regard.

Sentencing Orders and Comments:

30. Accordingly, on what is before me, I sentenced you as follows;
- a) For Taking vehicle without authority against section 59 of the Road Transport Act, I sentenced you to a fine of \$1,700-00 to be paid to the Crown via this Court by the 31st of October 2017 and in default of payment, you will be sentenced to 3 months imprisonment.
 - b) For Careless Driving against section 40(1) of the Road Transport Act, I sentenced you to a fine of \$2,000-00 to be paid to the Crown through this Court by the 31st of October and in default of payment, you will be imprisoned for 6 months.
 - c) For Driving without a Valid Driving License against section 20(1) of the Road Transport Act, I sentenced you to a fine of \$2, 000-00 to also be paid to the Crown via this Court by the 31st of October 2017, and in default of payment, you will be imprisoned for 6 months.
 - d) This Court stands to be corrected by the High Court, therefore any party who is aggrieved by this sentence should appeal to the High Court within 14 days from now.
31. In passing, I note that you may find it difficult to pay the above fines, however, you have to face the consequences of your action, (and given the usual existence of strong extended family relationships in our society, I believe that your people will be able to lend you a hand).
32. Also, I wish to add, that since the Police were unable to confirm if you were previously issued with a driving license, I will not make any orders relating to endorsement or suspension of license.

Dated this 1st day of September 2017.



A handwritten signature in black ink, appearing to read "Alpheus", written over a horizontal line.

Alpheus Madamangi David

(Principal Magistrate)