

**IN THE CENTRAL MAGISTRATE'S COURT)
OF SOLOMON ISLANDS AT HONIARA)
(Criminal Jurisdiction)**

Criminal Case No. 255 of 2017

**REGINA
-V-
WILLIAM MARAU**



Date of Hearing: March 27, 2017
Date of Sentence: March 29, 2017

*Mr. Motui for prosecution
Accused in person*

SENTENCE

Background

1. The accused, William Marau (“accused”), pleaded guilty to the charge of presence of alcohol in person’s blood contrary to section 43A of the *Road Transport Act*. This is a new species of a traffic offence created by the recent legislation for alcohol testing called the *Police and Transport Legislation (Amendment) (Alcohol Testing) Act 2016*. The aim of the legislation is to reduce death and serious injury resulting from vehicle accidents where alcohol has been a major contributing factor. The maximum penalty set by this legislation for this offence is a fine of \$10,000 or 12 months imprisonment or both. It also requires disqualification of driver’s license.

Summary of facts

2. The accused is a member of the National Parliament when he committed the offence.
3. During the night on 4th of March 2017, Kukum Traffic officers were conducting a Random Breath Test traffic checks along the Mendana Avenue Road in front of the Central Police Station. At about 9:48pm, they stopped a Grey Toyota RAV4 driven by the accused and pulled him at roadside for a breathalyser test. He voluntarily participated and following the preliminary test, police found the level of alcohol concentration present in his blood was 0.145% which exceeded the permitted level of 0.09%. He was escorted to Central Police Station for the final breathalyser test where his final test result showed 0.132% of alcohol present in his blood.
4. As a result of this, he was charged pursuant to section 43A of the *Road Transport Act* and bailed to appear for this matter. On arraignment, he pleaded guilty to the charge.

Aggravating factors

5. There are only three (3) matters I considered as aggravating factors for this case:
- First, the accused made a conscious decision to drive the vehicle along the main road although he knew very well he had consumed alcohol prior to driving his vehicle. He should have known that driving shortly after drinking alcohol is not proper and certainly will expose him of being charged with a traffic offence if confronted by police during police traffic operations. He failed to consider that common sense thought and instead, did the opposite.
 - Second, he is a member of the National Parliament who participated in the making and passing of the *Police and Transport Legislation (Amendment) (Alcohol Testing) Act 2016* for public compliance and adherence. As a legislator, he should honour and uphold what he had legislated for vehicle users throughout the country. Instead, he dishonoured it. Such attitude displayed by him as a national leader undermines public confidence and will demean the general respect expected from the public towards our traffic laws and regulations.
 - Finally, he is a minister for the Ministry of Justice and Legal Affairs when he committed the offence. Being a minister for that noble ministry, he ought to know that this ministry is responsible for the administration of justice and matters relating to legal affairs of our country. He, as the overall Administrative Head of the ministry should lead by example and act ethically by complying and adhering to our state laws and regulation which by virtue of his portfolio, he looks after. Instead, he ignored that ministerial and public expectation and committed this traffic offence.

Mitigating factors

6. In terms of his mitigating factors, I considered first of all his early guilty plea to the charge. Secondly, he was remorseful for his action and had sincerely apologised to the court for his involvement in the commission of the offence. He promised that he won't repeat it in future if he decides to take alcohol. Unfortunately, I won't treat him as a first time offender since he has prior convictions before this same Court in 2009.

Matters of concern in alcohol related traffic offences

7. Drunk driving offences is too prevalent in Honiara and even in other parts of our country. Despite the introduction of the breathalyser test, the number of cases for this offence continues to increase at an alarming rate. This, in my view, shows the ignorance of vehicle users to adhere or comply with traffic rules and regulations. In the case of *R v Samo*,¹ I made this observation which I think it's equally important to restate it here particularly with attitudes of individuals who continued

¹ CMC-CRC No. 614 of 2016

to involve in drunk driving offences despite the introduction of the breathalyser test and the police awareness programs:

“I have observed these offences committed by the accused are now prevalent in Honiara especially when carelessness, alcohol, pride or ignorance dominated the mindset of drivers. Despite some of the hefty fines I’ve imposed for past traffic offences; ongoing police awareness programs to ensure adherence to traffic rules and regulations, and the introduction of the breathalyzer test, the trend continued to be sky-rocketed. This problem in my view lies in the attitude of individuals and is like a syndrome to the enforcement of law and order in our country. To cure this syndrome requires a definite need for improvement and a change of attitude of an individual. As responsible citizens of this country, we have to change and move forward towards building good character and attitude within ourselves. We have to change our behavior, our mentality and our thinking in order for this nation to change. This is a responsibility call rests solely on an individual because if we think it’s someone else responsibility or just fond of criticizing our leaders or our law enforcement agencies then, we are not taking any step to changing, to become responsible law abiding persons and good citizens. That responsibility call starts and ends with an individual since only by being different we can make a difference. That should be our attitude and our goal.”²

8. I think there should not be any confusing about these remarks as the answer to reduce this delinquency is very clear and simple. Otherwise, this problem will even get worse in future despite of whatever legislation we put in place to deter traffic related offences.

Sentencing consideration

9. In terms of the sentence for drunk driving offences, the case of *R v Sulega*³ provides a good guideline for the starting point the Court should follow for guilty plea matters. In that case, the defendant pleaded guilty to one count of driving when unfit to drive through drink or drug. Palmer J. (now CJ), when issued a guideline setting out the minim fees to be imposed for guilty plea matters echoed:

“As a guideline the minimum fines to be imposed on drunk driving offences should not be less than \$200-00. Only for very good reasons should they go below \$200-00 and must be stated in the sentence. For second offenders, I would expect a custodial sentence to be imposed unless there are exceptional reasons for not doing so.”⁴

10. When explaining the mode of payment and the need to impose adequate penalties to reflect the need for deterrence, his Lordship continued:

“The courts must therefore continue to maintain that same vigilance when dealing with such offenders. If a person's means are to be taken into account when considering the level of fines, then perhaps more time can be given, say a fine of

² At paragraph 8 of the sentence

³ [1999] SBHC 42; HC-CRC 133 of 1999

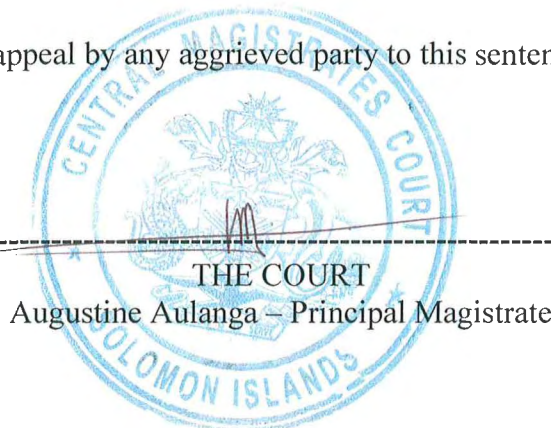
⁴ At page 2 of his review decision

\$300-00 payable over a period of 28 days; the first half of \$150-00 to be paid in 14 days and the balance the remaining 14 days.”⁵

11. The penalty handed down in *Sulega* was during the period when the maximum penalty for drunk driving offence was \$400. Now it was increased to \$10,000. This is significant increase of 25 times of the former maximum penalty. Therefore, the corresponding increase in fine to reflect the recent increase in penalty should be \$5,000.
12. This increase in the penalty for this offence is remarkable, as it clearly reflected a strong push by the Government and the civil society to deter drunk driving offences against those who are minded to commit this particular offence. Therefore, the court as the institution and also the implementer of this legislation must not shirk its duty by giving undue weight to personal or sentimental factors and thereby, suppresses the intention of this legislation when it comes to sentencing. The Court must be vigilant in its stands against drunk driving offences in light of its current prevalence.
13. I am mindful of the fact that he is currently a member of the National Parliament and holds a very important role as a national leader by virtue of his position. Therefore, in my view, the appropriate form of penalty for him will be a non-custodial sentence.

Sentencing order

14. To reflect the principles enunciated in *Sulega's* case and the intention of the parliament when passing this legislation, and the stern need to deter this traffic delinquency and after balancing them with the mitigating and aggravating factors of this case, I hereby sentenced the accused, William Marau, to a fine of **\$5,000 payable to the Central Magistrate's Court Registry Office before or by 12th of April 2017. In default, 6 months imprisonment.**
15. Since the nature of his job involves driving which he relied on to perform his official duties, I consider his case falls within the *special reasons* category under section 29(1) of the *Road Transport Act*. For this reason, this warrants leniency from the Court and therefore, I order that he will not be disqualified from driving.
16. 14 days right of appeal by any aggrieved party to this sentence.



⁵ Ibid