

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

CRIMINAL JURISDICTION

Criminal Case No. 536 of 2017

REGINA

V

CHARLES SOLOMON HABATIA

Date of sentence: 21st September 2018

Ms. F. Fakari'i for the Prosecution
Mr. B. Alasia for the Accused

SENTENCE

1. The accused, Charles Solomon Habatia, was found guilty after trial of one count of conversion of \$21, 700 being a Solomon Islands government money in the form of a special imprest. That money was meant for police operations within the Honiara city. Instead, he converted it to his own benefit. His action therefore was in breach of section 278 (1) (c)(i) of the *Penal Code*.
2. That offence carries a maximum penalty of 7 years imprisonment. Although it is a misdemeanour, a custodial sentence is expected if it involves a large or substantial amount of money.
3. During the trial, the facts that were established revealed that in 2016, the accused held a title of Police Superintendent and was the Operation Manager for Honiara city. Before June 2016, he applied to the Ministry of Finance and Treasury for a special imprest money of \$24, 000. The application was approved and the money was raised and paid to him. It was purposely to fund police operations within the Honiara city. He only used \$2,300 of that money for police operations. The remainder of \$21, 700 was used for purposes other than for police operations which have been found to be for his own benefit.
4. Both the prosecution and the defence submitted written submissions on sentence and were given the opportunity to speak on their written submissions.
5. The sentencing tariffs for conversion offences in this jurisdiction had been reported in a good number of cases. Although there were variations in the penalties imposed in those cases, the range of the sentence following a trial was identified to be from 12 – 24 months imprisonment. However, none of those cases set a sentencing guideline for conversion charges and this failure has resulted in a lot of variations in the sentences. I

hope in the future, the higher courts may come up with sentencing guidelines for this offence to assist the lower court. This guideline can be something like this:

- (1) \$1 and \$1000, an imprisonment term should rarely be imposed;
 - (2) \$1000 and \$10,000, an imprisonment term of up to 2 years' is appropriate;
 - (3) \$10,000 and \$40,000, 2 to 3 years imprisonment is appropriate;
 - (4) \$40,000 and \$100,000, 3 to 5 years imprisonment is appropriate; and
 - (5) More than \$100,000, imprisonment of more than 5 years is appropriate.
6. I have perused the cases but I am unable to find any assistance in terms of the sentencing guidelines. Only the sentencing orders were given.
 7. Three cases I prefer to refer to their sentences.
 8. In *Dausabea v R*,¹ the appellant, Charles Dausabea, was convicted in the Magistrates Court of one count of fraudulent conversion contrary to section 278 (1) of the *Penal Code*. He was sentenced to 18 months imprisonment and ordered to pay compensation of SDB40, 000. He appealed unsuccessfully to the High Court and then to the Court of Appeal. The Court of Appeal rejected his appeal and upheld the sentence imposed by the Magistrate Court.
 9. In *R v Kemakeza*², the accused, Mark Kemakeza who was a national parliamentarian, was convicted after trial of fraudulent conversion of \$280,000. He was sentenced at the Magistrates Court to 14 months imprisonment and ordered to pay \$280,000 to the State.
 10. In *R v Ashley*³, the accused, Charles Ashley, was convicted after trial of two counts of conversion of \$1,110,000. He was sentenced to 24 months imprisonment for each count to run concurrently. However, half of that sentence was suspended for one year while the remainder was served in prison taking into account the remission period. It appears that the suspension sentence was reached after the accused had already paid the balance of the money he alleged to have converted from the complainant.
 11. Conversion of public monies by public servants or officials is utterly unacceptable and a contemptuous fraudulent act. It is a scam. If it thrives in public offices, a lot of money will be lost or misused for personal gains and benefits. A small economy like Solomon Islands cannot afford to allow this to thrive since this will deprive the government and the people from the services expected from the use of the money. There is a public outcry we see and hear of everyday that mismanagement and conversion of public funds in the public offices is like a hobby and therefore comes the need for the court to deter this malpractice and deceptive criminal conduct. Otherwise, the current and the future generations will continue to suffer at the hands of few selfish individuals who threat public monies as their own personal property. The intention here is simple and that is; to ensure those who occupy public offices must do their work with honesty and integrity in accordance to the law and should not abuse their office and positions to benefit themselves at the expense of the country.

¹ [2008] SBHC 30

² [2012] Unreported Criminal Case No. 1241 of 2009

³ [2012] SBHC 10

12. In the present case, the amount of \$21,700 converted by the accused to his own benefit is a significant amount of money. This money if rightly used would provide the much needed policing services for the Honiara city. Given that crimes and antisocial behaviours are frequently committed in Honiara, by converting it to his own use, he therefore deprived the police authority and the public at large from the use and benefits of the services expected from that money.
13. This amount of money also shows an indication of the extent to which the accused is prepared to be dishonest and flout the law to use the money to his own benefit.
14. I also consider that he was a police officer and held a title of a Police Superintendent when he committed the offence. In that capacity, he was the Operation Manager of Honiara city. Being a police officer of that status, he has a fiduciary duty to ensure the monies received are properly used and accounted for. He made false entries in the receipts and the retirement breakdown of the imprest. This therefore breached the oath that he took as police officer. Being a police officer when committing a crime has been recognised as an aggravating factor in this jurisdiction. This is even greater since he was the senior member of the police at the time of the offending.
15. Also, the conversion of the money occurred over a period of one month and that is, from June to July 2016. The evidence has established that the offending was clearly well thought out and carefully planned. The creation of the false receipts shows his malicious intention to deceive the Solomon Islands government.
16. In his mitigation, I am urged to consider that he is a family man with five children. He is the sole bread winner of his family and he now lost his job as a result of this offending. He was also considered as an active member of the Church of Melanesia before his incarceration. I accorded due weight to those factors accordingly.
17. So what should be the appropriate sentence for this case? I adopt the checklist formulated in the case of *State v Benson*⁴ that requires only a consideration of 'yes', 'no' or 'neutral' answer to determine the aggravating and the mitigating factors of this offending. The affirmative (yes) answers will be considered as mitigating factors, the negative (no) answers will be the aggravating factors while the neutral answers will be considered as a neutral factor. The checklist is as follows:
 1. Was only a small amount of money involved? – No, the amount of \$21,700 is a significant amount of money.
 2. Was the offender in no special position of authority or trust? – No, the accused was the Police Superintendent and the Operation Manager for Honiara city.
 3. Did the transactions take place over a short period and not involve a pre-meditated, cunning plan of deceit? – No, the offending occurred over a period of one month and involved false creation of receipts and entries in the imprest retirement. It was a well calculated premeditated planned deception and fraud.

⁴ [2006] PNG NC 68

4. Was the money or property applied to a good use? – No, there was no evidence that he used the money for other government or public purposes.
5. Did the offender's actions have only a small adverse effect on other persons, eg the owner of the property, and were the victims in a position to carry the losses caused by the offender? – No, the accused action did not have only a small adverse effect on the police operations. The sum of \$21,700 for a Honiara city police operations is a lot of money. Certainly, the needed policing services that require finance for the month of June 2016 were frustrated and not carried out.
6. Did the offender's actions have only a small adverse effect on public confidence in the integrity of the public sector, the banking system or the private sector or a company? – No, the public confidence on the works and the integrity of the Royal Solomon Islands Police is extremely high. It is an institution that should lead by example. The accused action has brought his honourable office into disrepute. It has a significant adverse effect on public confidence in the integrity of the policing job when managing public funds.
7. Did the offender give himself up before being detected? – No, he didn't give him up to police.
8. Did the offender cooperate with the police in their investigations? – Yes, he was very cooperative with police during the course of police investigation.
9. Has the offender repaired his wrong, eg by repaying the money? – No, there is no evidence that he already repaid the money.
10. Has the offender pleaded guilty? - No
11. Has the offender genuinely expressed remorse? – No, the accused was convicted after trial. He vigorously contested his case.
12. Is this his first offence? – Definitely, yes
13. Has the offender and his family already paid a heavy price for his actions? – Neutral. There is no evidence that the accused and his family have already paid a heavy price for his action. He and his family are probably feeling some shame and embarrassment over the court proceedings, but that is the price normally paid when someone gets involved in criminal activity. He has not lost his job.
14. Can the offender be regarded as a youthful offender or are his personal circumstances such that they should mitigate the sentence? – No, he is not a youth but already a mature offender.
15. Are there any other circumstances of the misappropriation or the offender that warrant mitigation of the head sentence? – No, there is no evidence that he

committed the offence because of frustration or any disagreements with his colleagues.

18. From the checklist, there are overwhelming aggravating factors than the mitigating factors. Even if I consider his mitigating factors, the presence of the aggravating factors clearly warrants a custodial sentence.
19. I have considered his personal reasons and circumstances. Unfortunately, I am not convinced that they should outweigh the aggravating factors I found in this case.
20. I adopt the sentiments expressed by Palmer CJ in *Regina v Sisiolo*⁵ to support this view *“Any form of incarceration will always cause hardship on family members and close relatives...It has always been said that these are the consequences the accused should have thought about before committing the offence. Part of that means that he must be prepared to face up to the prescribed penalties set out under our laws and the hardship that may follow from any such consequences. The hardship that will be faced by his family must be balanced with the seriousness of the offence committed and the importance of making it clear that those who commit such offences must expect a custodial sentence...”*⁶
21. In my view, offenders who showed no remorse and found guilty after trial for conversion of public monies must face the consequence of their actions. The court should not be too generous and shy away from its duty in deterring this offending when it comes to sentencing. The need for general deterrence is an important factor for the court to consider. This position is also recognised in other advanced jurisdictions like in Australia in *R v Houlton*⁷ where the court referred to the decision of DCJ Twigg and emphasised as follows:

*“In cases of misappropriation of funds by professional people entrusted with funds, the dominant option is full custodial sentence. The need for general deterrence is particularly important in these instances. Those who trust such professional people are entitled to have that trust recognized. The general community, and in particular the north coast community must be listened to, of their abhorrence at these gross breaches of trust. Not only must there be a particular warning to the prisoner, but there must be a public warning to ensure that those entrusted with funds in our community will be warned, by harsh penalties imposed not to breach that trust.”*⁸

22. I adopt these sentiments and applied them accordingly for this case.
23. I am conscious of the trend of sentences been imposed by our courts in the past for this offence for contested matters which unfortunately, did not exceed 2 years even if the amount is \$100,000 or more for example. Why it does not exceed 2 years imprisonment remains a hovering question that only the judicial officers will know although the

⁵ SBHC 35; HCSI-CRC 194 of 2007

⁶ Referred to at page 4 of *R v Ellison Raoga* CMC-CRC No. 904/2016

⁷ [2000] NSWCCA 183 (17 August 2000)

⁸ At paragraph 26 of the judgment

expectation is obvious. It is often said that the use of past cases also provides the court an imperfect guidance as to what ought to be the appropriate sentence.⁹

24. I think the time has come that our courts must revisit the past sentences imposed for this offence whether or not it is a contested matter. The courts must be vigilant and unwavering in their stance against misuse or conversion of public monies and that a deterrent message must be sent unreservedly. Otherwise, potential offenders will not hesitate and are too prepared to commit this offence knowing that the courts will leniently punish them at the end of the day. The usual deterrent message normally understood and of course, will be feared by the general public in so far as the context of Solomon Islands is concerned is the imposition of lengthier imprisonment term.
25. Given the need for the courts to develop sentencing guidelines for conversion offences, the starting point for conversion of the amount of money (between 10,000 and \$40,000) in my view for a contested matter is 3 years imprisonment and so is my decision for this case. In light of the aggravating factors alluded to, this sentence is increased to 6 months.
26. I therefore sentenced the accused, Charles Solomon Habatia, to **3 ½ years imprisonment.**
27. Presentence period is to be taken into account.
28. Right of appeal applies.



(Augustine Aulanga – Principal Magistrate)

⁹ See *Sahu v Regina* [2012] SBHC 122