

**IN THE CENTRAL MAGISTRATES' COURT
OF SOLOMON ISLANDS**

Criminal Jurisdiction

Criminal Case No. 189 of 2015

On the 26th day of June 2019
Before Deputy Chief Magistrate, Ricky Iomea



Sergeant Mr. Konle for the Police Prosecution
Daniel Kwalai for the Defendant/Accused.

BETWEEN: REGINA Complainant
AND: BILLY BUGA Defendant/Accused

SENTENCE

Background

The defendant appears today to receive his sentences for the offences he had pleaded guilty to. He pleaded guilty to the following offences:

No.	Offence	Section contravened	Plea entered	Date of plea	Maximum penalty
1	Malicious damage	Section 326 (1) of the Penal Code	Guilty	16/4/2015	2 years impr
2	Common Assault	Section 244 of the Penal Code	Guilty	16/4/2015	1 year
3	Simple larceny	Section 261 (1) of the Penal Code	Guilty	9/5/2019	5 years impr (s. 261(1))/if previously convicted of felony ten years impr (s. 26 (2))
4	Simple larceny	Section 261 (1) of the Penal Code	Guilty	9/5/2019	5 years impr (s. 261(1))/if previously convicted of felony ten years impr (s. 26 (2))
5	Simple larceny	Section 261 (1) of the Penal Code	Guilty	9/5/2019	5 years impr (s. 261(1))/if previously convicted of felony ten years impr (s. 26 (2))
6	Simple larceny	Section 261 (1) of the Penal Code	Guilty	9/5/2019	5 years impr (s. 261(1))/if previously convicted of felony ten years impr (s. 26 (2))
7	Simple larceny	Section 261 (1) of the Penal Code	Guilty	9/5/2019	5 years impr (s. 261(1))/if previously

					convicted of felony ten years impr (s. 26 (2))
8	Simple larceny	Section 261 (1) of the Penal Code	Guilty	9/5/2019	5 years impr (s. 261(1))/if previously convicted of felony ten years impr (s. 26 (2))
9	Simple larceny	Section 261 (1) of the Penal Code	Guilty	9/5/2019	5 years impr (s. 261(1))/if previously convicted of felony ten years impr (s. 26 (2))
10	Simple larceny	Section 261 (1) of the Penal Code	Guilty	9/5/2019	5 years impr (s. 261(1))/if previously convicted of felony ten years impr (s. 26 (2))
11	Simple larceny	Section 261 (1) of the Penal Code.	Guilty	9/5/2019	5 years impr (s. 261(1))/if previously convicted of felony ten years impr (s. 26 (2))

The facts

The first incident

The agreed facts for sentencing are that:

On around 16th and 17th November 2014, the people around Vura area experienced unknown person(s) going around in their residences removing valuable properties such as mobile phones, flash drives, hard drives, cash and etc. The following nine Complainants namely; Hemalyn Tino, Wilson Tanuqu, Narita Leo, Jessie Leo, Victor Hou, Nancy Pio, Humphrey Pio, Nelly Grace Wawale and Ray Maetai had lost their mobile phones.

Around 3 o'clock in the early morning of 17th November 2014 Hudson Matai with his other two friends Scally and Andrew Wale were sitting down opposite Lisma store. It was quite around that time. They heard the victim Nelly Grace Wawale was screaming in her house. The house was behind where Hudson and his friends were, opposite Lisma store. They ran up to the victim's house. When they arrived she told them that her phone and money were taken by somebody. Scally and Andrew were sons of the victim Nelly Grace Wawale.

Hudson Matai then decided to go back to his residential area. He sat down and played a game on his mobile. While he was playing the game he heard a sound from the door lock, it was shaking and noisy. He looked up and saw a short person wearing short trousers and shirt. He saw the person tried to open the door. Hudson Matai crawled and held a stone and moved closer where the person was. That person realized that somebody was coming closer to him so he quickly jumped out and ran down to the road and ran away. Mr. Matai then shouted by saying "man steal come". The people in Hudson's residence woke up and this included Ray Maetai and Wilson Tanuqu.

Both Ray Maetai and Wilson Tanuqu checked their phones but they were missing. Ray Maetai's phone was a Sony Ericson phone with mobile sim number 7715714. The Complainant Wilson Tanuqu's phone was a Samsung Touch screen.

The suspect was seen by boys living with the Complainants to be wearing a red shirt and white hair. Ray, Hudson, Crift and Fakaora boarded a car and tried to search for the suspect. They drove down and met the defendant, Billy Buga at the Vura 1 (one) junction, who was still wearing the same clothes so they stopped to ask him. The defendant saw them so he escaped further down to the Kukum SDA area. They kept on following him and met him again in-front of Kukum clinic. They stopped but he again escaped from them down to town. They kept on following him and met again in-front of the Mission place bus stop so they stopped and picked him. They took him to the Central Police Station. The defendant, Billy Buga was searched and the following listed items were recovered in the bag carried by him;

1. One Blu phone valued at \$500.00, two Nokia black/silver/white in colour phones valued at \$1,200.00 owned by Hemalyn Tino.
2. One samsung touch screen by Wilson Tanuqu.
3. One Blu brand mobile phone with sim number 7472814/7794029 owned by Narito Leo.
4. One black touch screen with sim number 7889861 worth \$1,000.00 Blu short type blue in colour worth \$200.00 owned by Jessy Leo.
5. One Plum brand mobile with sim number 7680580 and Haus brand mobile with sim number 7586435 owned by Victor Hou.
6. Two Nokia brand mobile phone and one Sumsung brand mobile phone owned by Nancy Pio
7. One mobile phone sim number 7514601 owned by Humphrey Pio.
8. One Blue brand phone owned by Nelly Grace Wawale
9. Sony Ericson brand with mobile sim number 7715714 owned by Ray Maetai.

All nine Complainants came down to the Central Police Station and took back their phones. The person brought in was well identified by Police Officers as Billy Buga, the defendant.

The second incident

The agreed facts are that;

On the 1st March 2015 between 6.00 o'clock and 8.00 o'clock in the morning at Green Valley, the Complainant, John Keniapisia was awoken by action of the defendant Billy Buga. The defendant was armed with a bush knife. The defendant came in the Complainant's compound and damaged the Complainant's car by cutting the rear glass of the car registration MA-5890.

The total cost of repair for the damage was \$11,000.00.

The Complainant heard what had happened so he walked out of his house and saw the defendant again damaged the two left doors of another car registration number MB-6449. The Complainant told his cousin brother, Andrew Tahiri, who is a Police Officer and was off duty. Mr. Tahiri then followed the defendant and reached him at the Red post. There, a lady tried to talk to the defendant to leave the bush knife. The people there knew the defendant's way so they tried to explain to him that a Police Officer Andrew Tahiri was standing there. The defendant turned around and punched

the Officer, Andrew Tahiri. The people then captured the defendant with the assistance of Andrew Tahiri.

Aggravating factors

The maximum penalties prescribed reflect how serious the Legislators view these offences. When considering the sentences to be imposed, the Court must also have regard to the maximum penalties. However, it is trite that the maximum penalties are only reserved for the worst type of offending. Each case must be considered on its own merits and facts. The present case will be considered on the basis of the facts for each of the offences for which the defendant has been convicted.

What makes the offending on the 16th of November 2015 serious are;

The defendant clearly has planned to commit the offences as can be seen from the number of stealings he committed against a total of nine victims, at different locations or homes on the night of 16th November 2014.

The offences of larceny were repeated during that night. The fact that he committed the offences under the cover of darkness and at a time when most residents were believed to be in their beds also makes the offendings serious.

On the 1st of March 2015, he used a weapon – a knife to damage the car of the Complainant. That damage had cost the Complainant \$11,000.00 to repair. There is nothing to suggest that the defendant had contributed to towards the repair.

On the 1st of March 2015, he was well aware as he was being informed by the people that a Police Officer by the name of Andrew Tahiri was there. Without fear and appearing to be provoked as the hearing of the word 'Police', he turned and punched Andrew Tahiri, a Police Officer. This action clearly indicates someone who had no respect for a Police Officer. The need to respect Police officers was well articulated by former Chief Magistrate Mr. Numapo in the case of R v Amelia Kabui,

“Police Officers are law enforcement officers responsible for upholding the rule of law, protect lives and property and maintaining peace and order in the community. They represent the authority of the State when performing their duties. Respect accorded to a police officer is a respect accorded to the rule of law. Police Officers must be allowed to perform their duties freely and without any fear of being attacked”

Assault against a Police Officer is serious. The sentence that the Court will impose must also reflect this view.

I note that the defendant is not new to the Court. He had been before the Courts on many occasions in the past since he was a juvenile. According to the Criminal Records tendered by the Prosecution, he has a total of 14 criminal convictions to which he had served a substantial amount of jail time in Prison. His coming back to Court after his latest release is a testimony to the fact that he had not learnt from prison sentences. In other words, the sentences have not dissuaded him from engaging in a life of crime. He is a risk to the community therefore the community must be protected from this kind of person.

The Court has no option but to impose custodial sentences, not only as punishment but to deter him and others from these kind of offences. The community too must be protected against this kind of person who, at their own will, decide to prey on innocent people and their properties for their benefit.

Mitigating factors

The aggravating factors must also be balanced against any mitigating features that are present in this case.

I noted that the Defendant was on remand since he was arrested on 1st March 2015.

He had pleaded guilty earlier to the offences of wilful damage and common assault but denied the nine counts of simple larceny and the nine charges were fixed for trial. It was only at the commencement of trial for these nine charges that he pleaded guilty to the charges after the Court decided to arraign him for purposes of the trial. His pleas of guilty to the nine charges, although were entered very late, they cannot be totally ignored in terms of weight on the resulting sentence. This is because the pleas still have elements of remorse in them.

I noted that all the properties stolen on the night of 16th November 2014 were recovered so he had not personally benefited from his offending but regrettably, his offending have brought unwanted consequences and that is, he will be punished for the offences.

Sentence

The issue is what would be the appropriate sentences to be imposed in the circumstances of this case? Having considered the various factors as mentioned earlier, I am of the view that the appropriate sentences to be imposed are as follows:

1. For each count of simple larceny, a sentence of 1 year imprisonment. To be served consecutively as they were committed against separate victims and mostly at different homes. A total of nine years.
2. For the malicious damage, 1 imprisonment is imposed.
3. For the common assault, 8 months imprisonment.
4. The sentences to be served consecutively to each other and they will also be consecutive to the total sentence for the nine counts of simple larceny. This will bring the total sentence to 10 years and 8 months imprisonment.
5. To reflect the pleas of guilty, 2 years, 8 months will be further deducted. The will leave the total sentence to be 8 years imprisonment.
6. Taking into account the principal of totality, I will further deduct 2 years from the above total sentence. So the total effective sentence to be served is 6 years imprisonment.
7. The sentence is backdated to commence on 1st March 2015.

The Court,


DCM – Ricky Jomea.

