

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

CRIMINAL JURISDICTION

CMC-CRC No. 334 of 2019

REGINA

V

AUGUSTINE FANDITUA

Date of Sentence hearing: August 31, 2019

Date of Sentence: September 4, 2019

Mr Vaike for Prosecutions

Mr Fagani for the Defence

SENTENCE

Introduction

1. Mr Augustine Fanditua, the Accused, appeared before the court with two counts:
Count one: Unlawful assembly contrary to section 74 of the *Penal Code*.
Count two: Riot contrary to section 75 of the *Penal Code*.
2. He was re-arraigned on the charges and pleaded guilty to both. I convict him accordingly.

Maximum Penalty

3. The maximum penalty of the offences are:
Count one: maximum penalty of one year.
Count two: imprisonment term not exceeding two years or with fine or with both.¹

Facts

4. Sometimes between 8am and 8pm of 24th April 2019, the Offender was seen amongst a group of people who were riotous by shouting, making loud banging noises, carrying and throwing rocks to private and public property. The Accused was carrying a rock at that time.

¹See section 75 of the *Penal Code* to be read with section 41 of the *Penal Code*.

Aggravating Factors

5. Carrying a rock in a riotous situation when rocks are being thrown at private and public property is serious. Serious because rocks were used to cause damage. However, it must be distinguished with other offences where weapon is used. First a riot is an outburst of control where a group of people take it cause damage or looting. In that circumstance, damage will become part of the offence. But, is rock throwing and rock carrying part of the definition? Section 73 of the *Penal Code* defines riot as:

“When an unlawful assembly has begun to execute the purpose for which it is assembled by a breach of the peace and to the terror of the public, the assembly is called a riot, and the persons assembled are said to be riotously assembled.”

Clearly, from the definition there is no reference to possession of weapon. Carrying of rock is not part of the offence. There is no suggestion that the Offender would use the rock. Or if the Offender was charged with section 21 or 22 of the *Penal Code* to have the Accused of the same culpability of the rock throwers and actually causing damage. The assessment of damage was not present in the facts to make serious the rioting. I will not use general knowledge as judicial notice of what happened on the day of 24th April 2019 to add on the facts of the matter. This is because there is not only one group that was riotous. But several. And which group caused damages is unknown. Therefore, it cannot be blanketed to all riotous groups. Further, if the damages are directly related to the riotous group the offender was with, it must be spelled out clearly as part of the facts. Facts of the case is the evidence which the court relies on for sentencing. The missing crucial evidence must be given to the benefit of the Accused. I will consider the merely carrying the rock is not using it.

Mitigating Factors

6. Took an early plea. Actually the Offender pleaded not guilty at the first opportunity but then changed his guilty Plea. There was no delay or a trial has started to consider the change of plea as very late.
7. First time offender. That the Accused was a law abiding citizen until he was arrested.
8. His personal circumstances. He is a young person who can be rehabilitated. His demeanour in court shows he was being remorseful and can be changed. Such people must be given the benefit of mitigation to rehabilitate and reflect and learn to become better citizens of the country.

Court Sentence

9. Duplicity is where one offence must only have one count or charge.² Or it can happen where the two counts arise from the same action or transaction. It is not duplicitous where two charges arise from a transaction but has two sets of actions. For example for unlawful assembly and rioting it would not duplicitous if the Offender first joined a group of persons who unlawfully

² See *Director of Public Prosecutions v Dunn* [2001] 1 CrAppR 352 Bell J, with whom Pill LJ concurred at page 357.

gathered together with the intention to commit an offence and then later turned riotous to cause damages to the public and private property. It is duplicitous, in my view, where the Offender was charged for carrying a rock in a group for rioting and at the same time for unlawful assembly. For that I will strike out the charge of unlawful assembly for bad of duplicity. As a result, I will vacate his guilty plea and conviction and acquit the Offender of unlawful assembly. However, I will maintain the conviction for riot and sentence him accordingly.

10. I must say to the Offender that the public interest is bitterly in discontent in such offence. This is the peoples' court where I will exercise their powers which I have been bestowed upon to do.
11. Rioting affects the economy, culture, image, politics, business and so forth, in a bad way. The economy has experienced a down effect through similar rioting in the past where the country has been crippled to try to fend itself and run as a country. Infrastructures, innocent business owners, schools, people have been affected by the looting and rioting. Similarly, the rioting recently which the incident is related almost reached that stage, if it had not been the Police that put up a good defence. Solomon Islands is nurturing a bad culture of rioting. Even people who do not know what is going on in the Political level in the Parliament joined in to cause havoc. Opportunities to cause and damage our own Solomon Islands. Rioting and looting.
12. I must say to the Accused, simply, STOP!
13. The sentence to be imposed must be appropriate. I have considered all the mitigating factors and most importantly, express my confidence in the Accused to rehabilitate but must consider deterrence strongly for the Offender and for the public.
14. The appropriate sentence is eight months imprisonment for rioting. I will reduce the sentence by two months to reflect the mitigating factors. The resulting sentence is 6 months imprisonment.
15. I have considered the pre-detention period spent and believe the Offender can become a better person if he serves his term out of detention. Therefore, I will suspend his imprisonment for one year.

ORDERS

16. The Offender's conviction for unlawful assembly is vacated permanently for bad of duplicity to the offence of riot
17. The Offender is sentenced for rioting 6 months imprisonment.
18. The six months imprisonment is suspended fully for one year.
19. Right of Appeal to any aggrieved party within 14 days of this sentence judgement.

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THE COURT

Ishmael Kekou – Magistrate First Class