



**IN THE CENTRAL MAGISTRATES COURT OF SOLOMON ISLANDS
AT HONIARA**

(Criminal Jurisdiction)

Criminal Case No: 02 of 2020

REGINA

-V-

WILLIE OLO, DILO FAIGA AND FRANK FIRIMOLEA

Coram: HOLLISON F (PRINCIPAL MAGISTRATE)

Appearances:

Mrs Olivia Ratu Manu, Principal Legal Officer, for the Director of Public Prosecutions (ODPP)

Mr Rodney Manebosa, Principal Legal Officer, for the Public Solicitors Office (PSO)

Date of sentencing and Mitigation: 15 May 2020 & 10 June 2020

Date of Sentencing: 11th June 2020

Notice: *This copy of the Court's Reasons for Judgment/Sentence is subject to formal revision prior to publication.*

SENTENCE

INTRODUCTION

1. The defendants Mr Willie Olo, Mr Dilo Faiga and Mr Frank Firimolea were each charged for one count of Escaping from Lawful Custody contrary to section 199 of the *Police Act 2013*. In this ruling, unless otherwise stated, the defendants shall be referred to by their individual names or together as "the defendants".
2. The three defendants pleaded guilty to the said charge on a previous court occasion. Hence, based on the pleas entered, I now pronounce and confirm their respective convictions.¹

AGREED FACTS

3. The three defendants are Mr Willie Olo of Namosioko village, Mr Dilo Faiga of Mankwai village and Mr Frank Firimolea of Ngaliwao Village, Malaita Province.

¹ The offenders are Mr Willie Olo, Mr Dilo Faiga and Mr Frank Firimolea.

4. Mr Olo is presently serving a three year sentence with respect to a robbery offence he committed in 2019 in MC-CC No. 761 of 2019.² He was also previously convicted and sentenced for shop lifting.
5. Mr Faiga is a first-time offender. He is however, facing a robbery charge in relation to the robbery committed at an ANZ ATM machine located at the Kwaimani Building in 2014.
6. Mr Firimolea is not a first time offender and he has four previous convictions for criminal trespass, misleading a police officer with false information, common assault, and shop breaking in which he was sentenced to two years imprisonment in 2006.
7. The incident in this present case occurred on the 15th of December 2019 in Honiara on Guadalcanal.
8. Prior to the date of the offending, two of the three defendants, Mr Faiga and Mr Firimolea were remanded in custody at the Correctional Services of Solomon Islands ("CSSI") Rove Central Correctional facility, awaiting trial for their other respective pending cases in which they were remanded for. The third accused Mr Olo, however, at the time of the offending has been and is presently serving a three years imprisonment sentence for a robbery case.
9. That on the date of offending the three defendants escaped from the custody at the CSSI Correctional facility, Accommodation Block 2 Charlie Wing.
10. The three defendants accessed the ceiling from the C Wing above the shower area by cutting through the mess and escaped through the cyclone mess on the roof elevation.
11. They then climbed through the inner perimeter fence by using Z bent wire and weaved ropes then jumped down to the next perimeter fence (internal perimeter). They scaled the internal perimeter fence by climbing an electricity post and jumped into the Norman's land area, they then finally climbed the external perimeter fence using wires and ropes again and escaped through the Honiara Botanical garden.
12. CSSI officers who were on duty in Block 2 at the time were not aware of what was going on. They only found out when they went to the Wing for the final lock down and roll call.
13. On the said date, the CSSI officers who were on duty were told by one of the prisoners that the three defendants had escaped. They were told that the three defendants had escaped some 30 to 40 minutes ago, around 8:40pm that night.
14. Police were alerted and the search for the three defendants commenced subsequently.
15. On 16th December 2019, the information with respect to the escape including the photos of the three defendants were released through the print media and shared widely via the social networking platforms.

² *Regina-v-Willie Olo* [SBMC-Criminal Case Number 761 of 2019] (9th December 2019)

16. On 6th January 2020, Mr Olo was re-arrested and charged by the Royal Solomon Islands Police Force (“RSIPF”).
17. The other two defendants Mr Faiga and Mr Firimolea were later re-apprehended and charged by the RSIPF on the 15th February 2020.

DISCUSSION AND ANALYSIS

SENTENCING PRINCIPLES

18. In sentencing, the classic principles such as punishment, deterrence and rehabilitation must always be considered.
19. Each case ought to be determined in accordance with its own set of facts, merits and circumstances. This is more commonly known as the principle of *individualization*. Professor Eric Colvin expounds on the said principle as follows:

This is the principle that a sentence should be appropriate for all the features of the particular case, including not only the circumstances of and background to the offence but also the history and prospects of the offender.

This individualization principle does not mean that all factors have equal weight. In general, violence factors are more important than “offender” factors.³

20. Professor Colvin further explains that when dealing with co-offenders it is important that their sentences must be consistent. He said that:

Consistency between co-offenders is particularly important. A marked disparity will generate a ‘justifiable sense of grievance’: see R-v-Nagy [2003] QCA 175; [2004] 1 Qd R 63 at 31.56c.⁴

21. Section 199 of the *Police Act* [Cap 26]⁵ provides as follows:

199 Escaping from custody

Any person who is in lawful custody and escapes, or attempts to escape commits an offence and is liable on conviction to a fine of 10,000 penalty units or 12 months imprisonment.

22. The maximum sentence is usually reserved for the worst cases.

³ Eric Colvin et al “Criminal Law in Queensland and Western Australia: Cases and Commentary”-Sentencing Principles (6th Edition, 2012) 947.

⁴ Eric Colvin et al “Criminal Law in Queensland and Western Australia: Cases and Commentary”-Sentencing Principles (6th Edition, 2012) 947.

⁵ *Police Act 2013*, s 199

FACTORS TO BE CONSIDERED

Aggravating features

23. The aggravating factors are as follows:
24. **Maximum Sentence.** The maximum sentence is 12 months imprisonment or SBD 10,000 penalty units. This alone shows that it is quite a serious offence.
25. **Premeditation and Planning.** The offence was premeditated and well-orchestrated. It was committed in the night and they used instruments such as wires and ropes to assist them with the escape.
26. **Delay to their other existing cases.** The escape by the defendants in or around December last year has contributed immensely to the delay of their existing and pending cases especially for Mr Firimolea and Mr Faiga. However, for Mr Olo he was at the time of the offending serving a three year imprisonment for a robbery case which is still effective up to the present.
27. **Causing Fear to the public.** The RSIPF launched an operation which was widely published in the media to re-apprehend the escapees. The defendants were arrested on the 6th January 2020 and 15 February 2020 respectively. Their escape also caused uneasiness and fear amongst the members of the public.
28. **Use of weapon.** The defendants used ropes and wires and these are technically weapons used in the commission of the offence.
29. **Lack of Respect on the Justice system.** Mr Olo was serving a sentence on the robbery charge at the time of the commission of the offence and is still serving his three year imprisonment sentence now. This means that there is no sign of remorse at all on his part and that he indirectly disagreed and did not accept his imprisonment sentence that he is presently serving for the offence of robbery in MC-CC No. 761 of 2019. For Mr Firimolea and Mr Faiga they were awaiting hearing and trials for their other respective cases. The right avenue for Mr Firimolea and Faiga to do was to make a proper bail application rather than absconding.

Mitigating Factors

30. On the other hand, the mitigating factors are as follows.
31. **Early Guilty.** The three defendants all pleaded guilty to the said offence at the first available opportunity. They are entitled to some reduction from their head sentence for their early pleas.
32. However, it is important and necessary to deal with the defendants individually when considering their other mitigating factors as they have distinct circumstances.

Willie Olo

33. *Personal Circumstances.* Mr Olo is a parent and he has two children and I take note of his parental responsibilities and duties.

Dilo Faiga

34. *First time offender.* Mr Faiga is a first time offender. This means that he has a previous clean criminal record and he is entitled to an allowance for this.
35. *Personal Circumstances.* He used to work as a truck driver which means that he is currently unemployed. He has a child, however, whether or not he is married is not specified in the facts.

Frank Firimolea

36. *Personal Circumstances.* He is married and has two children and I will take this into account.

COMPARATIVE SENTENCES AND SENTENCING TARIFF:

37. As alluded to above, the maximum sentence is either 12 months imprisonment or SBD 10,000.
38. In *Regina-v-Alatala* [2017] SBMC 57; the defendant in this case was a juvenile at the time the offending. He was sentenced to 4 months imprisonment for one count of escaping from lawful custody contrary to section 199 of the *Police Act 2013*. He was arrested and placed at the Central Watch House at the Central Police Station in Honiara and escaped on the pretext that he wanted to go outside for smoking.
39. In *R v Masuru* [2019] SBMC 40; Criminal Case 80 of 2019 (11 October 2019)⁶, the defendant in this case had committed multiple offences together with escaping from lawful custody contrary to section 199 of the *Police Act 2013*. He pleaded guilty to all the charges and was sentenced to 4 months imprisonment for escaping from lawful custody. The sentence was served together with the other offences which totaled up to 18 months imprisonment.
40. In *Regina v Lale* [2018] SBMC 10; Criminal Case 133 of 2018 (12 April 2018)⁷, the accused was detained in one of the cell blocks at the Central Police Station in Honiara. He then escaped through the main door but was recaptured on the same day. He pleaded guilty to one count of escaping from lawful custody contrary to section 199 of the *Police Act 2013*, and was sentenced to 5 months imprisonment.

⁶ *R v Masuru* [2019] SBMC 40; Criminal Case 80 of 2019 (11 October 2019)

⁷ *Regina v Lale* [2018] SBMC 10; Criminal Case 133 of 2018 (12 April 2018)

41. In *Regina v Maxwell* [2017] SBMC 5; Criminal Case 274 of 2016 (7 March 2017)⁸; the accused was arrested for one count of unlawful wounding contrary to section 229 of the *Penal Code* [Cap 26]. He was taken to the Henderson Police Station and whilst he was under the custody of the Police he escaped but got arrested again after 11 days. He was sentenced to 6 months imprisonment after pleading guilty to one count of escaping from lawful custody contrary to section 199 of the *Police Act 2013*.
42. Hence, the sentencing range for escaping from police custody ranges from 4 to 6 months imprisonment under section 199 of the *Police Act 2013*.
43. In this present case, the defendants escaped from the Rove CSSI correctional facility under the cover of the night using ropes and wires to climb through the heavily restricted and highly secured facility and fled through the Botanical garden. The present case involves the escape from a prison or correctional facility as opposed to escaping from the police custody. The escape forced and prompted the RSIPF to launch the 'operation hunt man' in which Government's considerable resources were expended or used and both the RSIPF and CSSI officers were involved. The operation went on for around 2 months until the remaining escapees were all recaptured on the 15th February 2020. I am aware that the three defendants were considered dangerous all throughout their time outside of prison which potentially caused public anxiety and fear.
44. Hence, it is my considered view that the present case is more serious in comparison to all the other cases cited above and I am satisfied that an immediate custodial sentence is inevitable and warranted.

STARTING POINT

45. After having considered the aggravating factors and the relevant circumstances of the present case as alluded to above, I am of the view that a starting point of 12 months imprisonment is appropriate.
46. **Guilty plea.** The three defendants entered early guilty pleas respectively and this must be considered in their favor. Their pleas saved the court's resources and time. In *Qoloni v Regina* [2005] SBHC 73; HCSI-CRC 076 of 2005 (21 June 2005)⁹, CJ Palmer quoted the passage in *R. v. Thompson* (2000) 49 NSWLR 383; 115 A Crim R 104 (CCA - a full bench) per Spigelman CJ, as follows:
- (iii) The utilitarian value of a plea to the criminal justice system should generally be assessed in the range of 10-25 percent discount on sentence. The primary consideration determining where in the range a particular case should fall is the timing of the plea. What is to be regarded as an early plea.*
47. In some occasions, it is questionable as to whether the entering of a guilty plea is actually a sign of genuine remorse or not. Sometimes, the evidence is so overwhelming and conviction is inevitable and the defendants were advised to enter guilty pleas. In *R-v-Jones* [200] QCA 84¹⁰, Davies JA said:

⁸ *Regina v Maxwell* [2017] SBMC 5; Criminal Case 274 of 2016 (7 March 2017)

⁹ *Qoloni v Regina* [2005] SBHC 73; HCSI-CRC 076 of 2005 (21 June 2005)

¹⁰ *R-v-Jones* [200] QCA 84 http://www.austlii.edu.au/cgi-bin/viewdoc/au/cases/qld/QCA/2000/84.html?context=1;query=r%20v%20jones;mask_path=au/cases/qld/QCA (Accessed 10th June 2020)

I would no doubt whether at least in this state a guilty plea is usually evidence of remorse. More likely in most cases, it is evidence of an expectation on the part of an offender usually as a result of legal advice that a guilty plea will probably result in a reduced sentence.

48. I am sure the sentiments echoed in *Jones*¹¹, are arguably true for this jurisdiction as well.
49. In *Cameron v R* [2002] HCA 6; 209 CLR 339; 187 ALR 65; 76 ALJR 382 (14 February 2002)¹²; their Honors Gaudron, Gummow and Callinan JJ said:
- Rather, the issue is to what extent the plea is indicative of remorse, acceptance of responsibility and willingness to facilitate the course of justice. And a significant consideration on that issue is whether the plea was entered at the first reasonable opportunity.*
50. I note that the early guilty plea taken by the defendants is a sign of the willingness to facilitate the course of justice but not necessarily an indication of remorse. Hence, I deduct 3 months which is equivalent to around 25% of the starting point, for each of the defendant to reflect the early guilty pleas entered.
51. I will now proceed to deal with each of the defendants individually with their other respective mitigating factors.
52. The court notes that a previous conviction that any defendant has should not prejudice him or her with any new cases that he may be convicted of.
53. In *Pitamama v Regina* [2005] SBHC 45; HCSI-CRC 003 of 2005 (11 March 2005)¹³, the Learned Judge referred to *R-v-Henry Su'umania*, and quoted the comments of Ward CJ (as he then was) as follows:

When sentencing persistent offenders the court must make protection of the public the principal consideration in determining the length of sentence.

*It is well settled however that even in such cases the sentence must be still be appropriate to the offence and the court must be careful not to sentence the accused for his previous convictions as was explained by Spreight JA in *Kaboa v. R* (1980/81) SILR 43 at 46. Thus, whilst previous good character may reduce a sentence, **previous bad character cannot increase it beyond the proper term** but the court can and should consider previous convictions in assessing the character of the man before it and the likelihood of his changing his ways.” (emphasis added)*

54. I am aware that for persistent offenders, public protection is the paramount consideration. I am also mindful of the fact that some of these offenders have previous conviction, and I fully understand that previous bad character cannot increase a sentence beyond the proper term.

¹¹ *R-v-Jones*, above n 9.

¹² *Cameron v R* [2002] HCA 6; 209 CLR 339; 187 ALR 65; 76 ALJR 382 (14 February 2002) http://www8.austlii.edu.au/cgi-bin/viewdoc/au/cases/cth/HCA/2002/6.html?context=1;query=Cameron%20v%20r;mask_path=au/cases/cth/HCA. (Accessed on 10th June 2020)

¹³ *Pitamama v Regina* [2005] SBHC 45; HCSI-CRC 003 of 2005 (11 March 2005)

Willie Olo

55. **Personal Circumstances.** According to Mr Manebosa of counsel for the three defendants, Mr Olo is married and has two children who are 10 and 8 years respectively. Although I am not advised as to whether Mr Olo is responsible for the welfare of his children, I deduct 1 month to reflect the fact that he has two children and he as a father owe some parental responsibilities towards his children.
56. Therefore, with respect to Mr Olo, I am satisfied that 8 months imprisonment is proportionate to the severity and nature of this case.

Dilo Faiga

57. **First time offender.** Mr Faiga is a first-time offender. He is however, facing a robbery charge in relation to the robbery committed at an ANZ ATM machine located at the Kwaimani Building in 2014. I deduct 1 month to reflect his previous good character.
58. **Personal Circumstances.** He has a child, however, whether or not he is married is not specified in the facts. He used to work as a truck driver which means that he is currently unemployed. Nevertheless, I deduct another month to reflect the fact that he is a parent and has parental responsibilities.
59. Thus, the resulting sentence for Mr Faiga is 7 months imprisonment and I am satisfied that it is proportionate to the severity of the offence that he committed.

Frank Firimolea

60. **Personal Circumstances.** Mr Firimolea is married and has two children and I will take this into account. I deduct 1 month to reflect his parental duties and personal circumstances.
61. Hence, with respect to Mr Firimolea, I am satisfied that an imprisonment term of 8 months commensurate with the gravity of the present case.

PRE-SENTENCE CUSTODY

62. **Pre-Sentence Custody.** Since Mr Firimolea and Mr Faiga were recaptured earlier this year, with the exception of Mr Olo, they have been remanded in custody up to the present. Technically, for Mr Olo since he was re-arrested in January 2020, he has never been remanded but he was and he is actually currently serving an imprisonment sentence in MC-CC No. 761 of 2019.¹⁴
63. It is also understood that Mr Firimolea and Mr Faiga were remanded for considerable amount of time prior to their escape in December 2019. However, those times spent in custody prior to the 15th of December 2019 are for different alleged offences in their other pending cases.

¹⁴ Regina-v-Willie Olo [SBMC-Criminal Case Number 761 of 2019] (9th December 2019)

64. There are two issues for consideration here. The first issue, pertaining to Mr Firimoea and Faiga is, whether their respective sentences for this present case should be back dated to the time that they were first remanded prior to their escape or the date when they were recaptured and placed in custody since 15th February 2020.

65. In *Tii v Regina* [2017] SBCA 6; SICOA-CRAC 14 of 2016 (5 May 2017)¹⁵, the Court of Appeal stated as follows:

27. *There may be other matters to be taken into account in arriving at the sentence ultimately imposed. For example, if an offender has been in pre-sentence custody, the sentencing judge should consider making an appropriate allowance for that.*

28. *In the normal course, pre-sentence custody should be taken into account in an offender's favour. If a sentencing judge decides not to do so, he should say so expressly and explain why he is not doing so.*

29. *There is no prescribed way for making allowance for pre-sentence custody. It is important that a sentencing judge take account of all the likely consequences of the way in which he does so. It is reasonable to expect the prosecutor and defence counsel to make any relevant submissions.*

30. *In a case like the present, where the offender was in pre-sentence custody solely on account of the offence for which he was being sentenced and where the period of pre-sentence custody was continuous (that is, unbroken by periods out of prison on bail), this should be done simply and effectively by ordering that the sentence be deemed to have commenced on the date he was taken into custody. See *Penal Code* s. 24(5). It would be necessary to make such an order as part of the sentence to ensure that the date he was first taken into custody was used as the starting point in calculating one-third of the sentence for remission purposes.*

31. *A sentencing judge should expose his reasoning, by indicating what matters he has taken into account at each step along the way to arriving at the sentence. Before imposing the sentence, he should review the allowances he has made along the way to ensure that the sentence he has provisionally decided upon is just and appropriate in the circumstances of the case.*

66. In *Selo v Regina* [2017]¹⁶ SBCA 17; SICOA-CRAC 9003 of 2017 (13 October 2017), the Court of Appeal further endorsed their position in *Tii-v-Regina* as follows:

The judge states the sentence was to run from the date of sentencing. He has the right to do so but if a judge is not going to give a credit for time spent in custody he should give reasons.¹⁴¹ The appellant almost immediately upon apprehension admitted his role in this offending and pleaded guilty at an early stage. We are satisfied that the sentence should run from the date of arrest on the 23rd February 2015.

67. Mrs Manu of counsel for the Crown and Mr Manebosa of counsel for the defendants both submitted that the sentences for Mr Faiga and Firimoea should be retrospectively commenced on the date when they were rearrested, that is, on the 15th February 2020.

68. Based on the case authorities available in this jurisdiction, I am satisfied that the sentence for Mr Faiga and Mr Firimoea should be retrospectively run from the date of their arrest after their escape which was on the 15th of February 2020.

¹⁵ *Tii v Regina* [2017] SBCA 6; SICOA-CRAC 14 of 2016 (5 May 2017)

¹⁶ *Selo v Regina* [2017] SBCA 17; SICOA-CRAC 9003 of 2017 (13 October 2017).

69. The next issue is in relation to Mr Olo in which his circumstance is a bit different from his other two cohorts. He is presently serving an imprisonment term for a robbery offence. The issue for him is whether or not this new sentence should be served concurrently or consecutively to the sentence he is presently serving in MC-CC No. 761 of 2019. In other words, should the sentence for the present case disregard the one that he is presently serving in MC-CC No. 761 of 2019?

70. Section 24(4) of the *Penal Code* [Cap 26] ¹⁷states as follows:

(4) Where a person after conviction for an offence is convicted of another offence, either before sentence is passed upon him under the first conviction or before the expiration of that sentence, any sentence of imprisonment which is passed upon him under the subsequent conviction shall be executed after the expiration of the former sentence, unless the court directs that it shall be executed concurrently with the former sentence or any part thereof:

71. Mrs Manu of counsel for the Crown submitted that this present case is a separate offence and has no nexus with the robbery charge in which he is presently serving the sentence in MC-CC No. 761 of 2019. She further added that this offence and the robbery offence occurred on two different dates in 2019 and 2020 respectively and they cannot be made to run concurrent but rather consecutively. She also referred the court to the leading case of *Regina v Bade* [1988] SPLawRp 12; [1988] SPLR 348 (21 December 1988)¹⁸ where his Lordship Ward CJ said:

When considering sentence for a number of offences, the general rule must be that separate and consecutive sentences should be passed for the separate offences. It is trite to point out that a man who commits, say, five offences should receive a heavier sentence than a man who only commits one of them.

However there are two situations where this rule must be modified. The first, that where a number of offences arise out of the same single transaction and cause harm to the same person there may be grounds for concurrent sentences, does not concern this appeal save to say that the learned magistrate correctly applied this principle in ordering a concurrent term for the malicious damage caused to Solo Lae's house during the burglary.

The second occasion for modifying the general rule arises where the aggregate of sentences would, if they are consecutive, amount to a total that is inappropriate in the particular case.

72. In *Angitalo v Regina* [2005] SBCA 5; CA-CRAC 024 of 2004 (4 August 2005)¹⁹; the Court of Appeal stated as follows:

The fundamental underlying principle is that a sentence should reflect the true criminality involved in the offences, without on the one hand punishing the offender more than once for the same or essentially the same criminal conduct or, on the other hand, failing to punish the offender for committing a crime. This will almost always be a matter of fact and degree, requiring the exercise of judicial discretion. The fundamental rule is the Court should ensure that both the end result does not exceed what is the appropriate punishment for the offender's criminal conduct, considered as a whole, and that result adequately punishes the offender for the crimes actually committed. It should be observed, moreover, that the language adopted by Ward CJ is indicative rather than mandatory.

¹⁷ *Penal Code* [Cap 26], s 24

¹⁸ *Regina v Bade* [1988] SPLawRp 12; [1988] SPLR 348 (21 December 1988)

¹⁹ *Angitalo v Regina* [2005] SBCA 5; CA-CRAC 024 of 2004 (4 August 2005)

73. The main consideration in any sentencing as enunciated in *Angitalo v Regina* is that a sentence must reflect the true criminality of the offence concerned.²⁰
74. Mr Manebosa conceded and said that the submissions of the Crown is the correct proposition of law as enunciated by the case authorities stated above. Particularly, he was saying the sentence for Mr Olo in this case should run consecutive with the sentence he is presently serving in MC-CC No. 761 of 2019 which is consistent with section 24(4) of the *Penal Code*.
75. In view of that, and pursuant to section 24(4) of the *Penal Code*, I am satisfied that the sentence for Mr Olo in this present case should run consecutively to the sentence for the robbery case in MC-CC No. 761 of 2019 he is presently serving.

CONCLUSION:

76. The events in this present case show that the infamous escape on 15 December 2019 by the three defendants from lawful custody is a deliberate and well calculated move executed by them which shocked and flabbergasted the country especially those who live in Honiara and Guadalcanal. The *modus operandi* demonstrated by the prisoners confirmed that it was premeditated. They escaped from the supposedly maximum security prison in the country and they understood quite well that such an escape could only be done successfully under the cover of the night. It prompted the RSIPF to launch the operation 'hunt man' and considerable government resources which include, amongst others, financial resources were used or expended. There are some lingering questions that will be left unanswered as to how those ropes and wires made their way into the prison cells of those three prisoners. In view of this, I must remind the CSSI and its executive to take stock and reexamine the overall performance of that government institution, and to determine the anomalies and weaknesses therein which resulted in the escape. I take judicial notice of the fact that the Commissioner of the CSSI took swift actions in suspending some of his officers within that organization. Most probably it is about time to start installing cameras within government institutions and agencies such as the CSSI correctional facility and the RSIPF offices.
77. It appears that the three defendants took the great risk on the day of their escape to do what they did. The defendants had ropes and wires to assist them to escape the highly secured prison (mostly fortified with barbed wires). There is no explanation being said in court by counsel for the defence as to the prime reason for their escape, however, they had indeed escaped from lawful custody.
78. Mr Manebosa of counsel for the defendants also submitted that the defendants were severely beaten by the Police. He further contended that Mr Firimolea and Faiga were shot with rubber bullets several times and they have the physical injuries to prove the allegations. He also said that when they were recaptured and entered the CSSI correctional facility at Rove, they were subjected to confinement separate from the general population and they were placed in a dark room as punishment. However, these allegations are not contained in the agreed facts nor there was any medical report furnished to the court to verify these allegations. It is also not specified whether the alleged shooting using rubber bullets by the Police were during the arrest, and whether or not the defendants were resisting any arrests. It must also be noted that the Police and the CSSI officers can or should only use and exert reasonable force where necessary during any arrest or confrontations with any potential offender or in this case,

²⁰ *Angitalo v Regina* [2005] SBCA 5; CA-CRAC 024 of 2004 (4 August 2005)

the escapees from the CSSI facility at Rove.²¹ Given the fact that there is no evidence to prove these allegations on the use of excessive force by the agents of the Crown, I will not place much emphasis on them. This does not in any way mean that the court condones police brutality and extra-judicial punishments.

79. Moreover, their escape is an insult and arguably a disparagement on the justice and legal system of the country. They illegally escaped from the CSSI correctional facility to free themselves from lawful and legitimate incarceration. For Mr Olo's case if he was not happy with his sentence for Robbery that he is presently serving, he could have instructed his lawyer to appeal the case. He admitted the offence of robbery and he was convicted on his own guilty pleas in December 2019 and the only avenue to overturn that sentence is by way of an appeal to the High Court.²² That has not been done. He then absconded which will only exacerbate his current situation. Thus, it is proper that Mr Olo's sentence for this present case should be served consecutively to the MC-CC No. 761 of 2019 as they arose from different transactions.²³ Similarly for Mr Faiga and Mr Firimoea, they should have made proper bail applications instead of absconding.
80. With the greatest respect, I must also say that the current maximum sentence for escaping from lawful custody contrary to section 199 of the *Police Act 2013* needs to be reviewed by the Parliament or legislature, and it should be increased to at least 5 years imprisonment in maximum. This is to deter prisoners and alleged offenders to escape from lawful custody either from the police or correctional facilities knowing very well the current maximum sentence is only 12 months imprisonment under the current *Police Act 2013*.
81. More so, I find it strange that the prosecuting authority opted to charge the three defendants under section 199 of the *Police Act 2013* as there is another alternative provision which is section 125 of the *Penal Code* [Cap 26] which is still a misdemeanor but would attract a maximum of 2 years imprisonment when it is read with section 41 of the *Penal Code* [Cap 26].²⁴ Interestingly, section 126 of the *Penal Code* [Cap 26] had been consequentially amended by section 78 of the *Correctional Services Act 2007* ("CSA 2007")²⁵, and a new subsection (d) was added, which means that escaping from lawful custody under this section is a felony and attracts a maximum penalty of 7 years

²¹ *Correctional Services Act 2007*, s 58. (2) *Where the use of force is permitted an officer may not use more force than is necessary in the circumstances, and shall make a report of all relevant matters to the Commandant in accordance with Commissioner's Orders.*

See also section 68 of the *Police Act 2013*, which states: (1) *A police officer who is exercising or attempting to exercise power against an individual under this or any other Act or law may use reasonable and proportionate force to exercise the power.*

²² *Regina-v-Willie Olo* [SBMC-Criminal Case Number 761 of 2019] (9th December 2019)

²³ *Penal Code* [Cap 26], s 24(4)

²⁴ *Penal Code* [Cap 26], s 125: "125. Any person who, on being arrested for an offence, and escape violently resists any police officer arresting him, or being in lawful custody, escapes from such custody, shall be guilty of a misdemeanor."

²⁵ *Correctional Services Act 2007 (Solomon Islands)*. Section 78 states: 78. The *Penal Code* is hereby amended by:

(d) deleting in section 126 the comma that appears at the end of subparagraph (c) and substituting a semicolon, and inserting the word "or" after the semicolon; and

(e) adding new subparagraph (d) after the word "or" so inserted-

(d) being a prisoner, escapes or attempts to escape from any correctional centre or from lawful custody."

imprisonment.²⁶ The CSA 2007 became operational on the 1st of April 2008 as per the Legal Notice Number 26 of 2008 gazetted and published on the 31st of March 2008.²⁷ However, it must be noted that charging an accused with the relevant statutory provisions is the discretion of the relevant prosecuting authority and this issue should be left for another day and forum. I shall deal with this matter based on the charges that were presented before the court and nothing more.

82. I also note that the identification and antecedent check sheet issued by the National Criminal Investigation Department (NCID) within the RSIPF needs to be properly and promptly updated. Apparently, the recent conviction of Mr Olo's robbery case in December 2019 in the MC CC No. 761 of 2019 is not reflected in the antecedent check list provided to court.²⁸ Initially, the prosecution's submission did not encompass this aspect. However, both the defence and the prosecution have made supplementary submissions when some of these issues were brought to their attention and the court is grateful for the efforts rendered by counsel.
83. The NCID within RSIPF must keep updating their information pertaining to any new offenders. There are many people who are convicted in these courts almost every day and the profile of each offender should be updated. Simply updating the data is not very technical in nature nor a rocket science. This is important so that it assists the court to know the accurate and previous history of a defendant or offender when it comes to sentencing. I suggest there should be a proper coordination between the prosecuting authorities and the NCID in terms of sharing of data and information.²⁹
84. Having said that, and after taking into account the sentencing principles such as punishment, deterrence and rehabilitation and other relevant details and circumstances of this case:

[1] I hereby sentence Mr Willie Olo and Frank Firimolea to eight months imprisonment each. Mr Olo's sentence in this case shall run consecutive to the robbery case in MC-CC No. 761 of 2019 that he is currently serving its imprisonment sentence. In relation to Mr Firimolea, his sentence shall be retrospectively commenced from the date that he was re-arrested on the 15th February 2020.

[2] Similarly, I now also sentence Mr Faiga to seven (7) months imprisonment and his sentence shall be retrospectively commenced from the date that he was rearrested on the 15th February 2020.

85. I do hope these sentences will deter the offenders and other prisoners and inmates not to commit further offences whilst in lawful custody, and that escaping from lawful custody has consequences.

²⁶ The consequential amendment of section 126 by the *Correctional Services Act 2006* would mean that in the event of consolidation, section 126(d) of the Penal Code [Cap 26], as amended, will read as follows.

126. *Any person who (d) being a prisoner, escapes or attempts to escape from any correctional centre or from lawful custody, shall be guilty of a felony, and shall be liable to imprisonment for seven years.*

²⁷ Legal Notice Number 26 of 2008, "Notice of Commencement", published and gazetted on 31st March 2008, at page 103. It states: "*In exercise of the powers conferred upon me by section 1 of the Correctional Services Act 2007, I Hon. Xxxxxx, Minister for Police, National Security and Correctional Services, do hereby appoint the first day of April 2008 as the date on which the said Act shall come into operation.*"

²⁸ *Regina-v-Willie Olo* [SBMC-Criminal Case Number 761 of 2019] (9th December 2019)

²⁹ Perhaps, the Justice and Information System (JIMS) should be tailored so that stakeholders such as RSIPF, CSSI, social workers department, and the National Judiciary all have access to critical information with respect to conviction, if that has not been done so.

ORDERS

86. The offenders are sentenced as follows:

- [1] The offender Mr Willie Olo is sentenced to eight (8) months of imprisonment for one count of escaping from lawful custody contrary to section 199 of *Police Act 2013*. Given the fact that he is presently serving an imprisonment term of three (3) years for one count of robbery in MC CC No. 761 of 2019, the sentence for this present case shall be served consecutively to the said robbery case, pursuant to section 24(4) of the *Penal Code [Cap 26]*.
- [2] The offender Mr Dilo Faiga is sentenced to seven (7) months imprisonment for one count of escaping from lawful custody contrary to section 199 of *Police Act 2013*. This sentence must be retrospectively commenced from the date when he was rearrested by the Police on 15th February 2020.
- [3] The offender Mr Frank Firimolea is sentenced to eight (8) months imprisonment for one count of escaping from lawful custody contrary to section 199 of *Police Act 2013*. This sentence must be retrospectively commenced from the date when he was rearrested by the Police on 15th February 2020.
- [4] I order accordingly.
- [5] Right of Appeal within 14 days.



The image shows a circular official stamp of the Central Magistrates Court. The text 'CENTRAL MAGISTRATES COURT' is visible around the perimeter of the stamp. Overlaid on the stamp is a handwritten signature in blue ink that reads 'F. Hollison'.

**PRINCIPAL MAGISTRATE FELIX HOLLISON
THE COURT**