

with the Prosecution that this type of offending continues to be on the rise especially in urban centres such as Honiara. This, in my view has necessitated the need to impose sentences that will have deterrent effects on offenders and would be offenders.

In the case of **Stanley Bade v R** [1988 -89] SILR 121 at page 125, his Lordship Ward CJ as he then was stated;

"For a normal burglary case, the only appropriate penalty must be an immediate custodial sentence. Where the burglary is not aggravated in any way, the starting point for an adult first offender should be two years imprisonment. From that point, this court should consider any aggravating factors such as committing the offence with the support of others, theft of personal items that can be of little or no value to the thief, general ransacking of the house, wanton damage, pre-planning and the degree of breaking necessary to gain entry. If such matters were present they should add to the penalty. Where masks are used, weapons are carried, threats are made or similar escalations in the seriousness of the offence are present, the penalty should be further increased and it would rarely be appropriate to pass a sentence of less than four years."

The certified Criminal records of the accused obtained from the Royal Solomon Islands Police Force Criminal Records Office on 11th October 2020 shows that the accused previous convictions. Before he was arrested for this offence, he was convicted and sentenced on 4th August 2006 by the Central Magistrates' Court on the following offences;

1. Criminal trespass - 1 month imprisonment, suspended for 2 years.
2. Misleading Police Officer by giving false information - 2 months imprisonment, served concurrently with the other imprisonment sentences imposed.
3. Common assault - 4 months imprisonment, served concurrently with the other imprisonment sentences imposed.
4. Burglary - 2 years imprisonment, concurrent with the other imprisonment sentences imposed.

The Prosecution is asking the Court to commit this matter to the High Court pursuant to section 208 of the Criminal Procedure Code due to the Accused's character as confirmed by his previous convictions recorded to be a repeated offender.

I note that the only conviction that is of similar nature to the present offending is the Burglary conviction to which he was sentenced to 2 years imprisonment.

The fact that he has reoffended on this instance after serving 2 years in jail is a testimony to the fact that the time spent in prison has not dissuaded him from further involvement in crime. It appears that the rehabilitation programs offered by the CSSI had not impacted his life in a meaningful way to be a better citizen.

In *R v Henry Su'umania* (Unreported HCSI-CRC 00287) Ward CJ as he then was said at page 2;

"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."

In *Pitamama v Regina* [2005] SBHC 45; HCSI-CRC 003 of 2005, Palmer CJ stated;

"It is important to bear in mind the words of caution echoed by Ward CJ when quoting Spreight JA in *Kaboa v R* that the court should be mindful of the fact that when sentencing a man with a string of previous convictions that whilst protection of the public is its principal consideration, it guards against the tendency to sentence for past convictions. To ensure that the line is not crossed the court should ensure that the sentence imposed is one that would not be inappropriate for the offence."

Having taken into account the facts of the case, the fact that the accused is not a first time offender, an immediate custodial sentence is necessary. Excluding the aggravating factors and the need for deterrence but taking into account the time he had spent in custody on remand, the proper starting point in my view is 3 years imprisonment.

In light of the guidelines echoed in the *Su'umani* and *Pitamama* cases above, the Court has to be careful not to sentence the offender for his past convictions but decide a sentence that is appropriate to the offence. I am of the view that any additions to the starting point would not go beyond five years, the maximum

penalty that this Court has power to impose for a single offence. Thus, the matter will have to be resolved in this court.

Considering the aggravating factors and the need for personal and general deterrence, one year is added to the starting point.

I find no mitigating factors to militate the total sentence arrived at above. The total effective sentence of four (4) years imprisonment is the appropriate sentence in the circumstances of this case.

I believe that this sentence will again provide another opportunity for the Accused to rehabilitate himself in a meaningful way so that when he has served his time and is released from prison, he will be a better person and a law abiding citizen. I hope that he will soon realize that there is nothing good about living a life where one finds himself often at odds with the law. All it does is that it brings consequences that one do not desire such as the deprivation of liberty and freedom of movement and separation for longer periods of time from family members.

It is the order of the Court that the Accused be imprisoned for a period of 4 years. The sentence is backdated to commence on the expiry date of the recently served 8 months imprisonment for escaping lawful custody.

The Court,



Ricky Iomaa DCM