

IN THE CENTRAL MAGISTRATES' COURT OF
SOLOMON ISLANDS



Criminal Jurisdiction

Criminal Case No. 1049 of 2020

On the 24th day of November 2020

Before Ricky Iomea, Deputy Chief Magistrate

Noel Aukwai for Police Prosecutions (Malaita)
Godfrey Male for the Accused.

BETWEEN:	REGINA	Complainant
AND:	RODNEY ADAM	Accused

SENTENCE

The Accused had pleaded guilty to one count of Burglary contrary to section 299 (a) of the Penal Code and two counts of House breaking and committing a felony contrary to section 300 (a) of the Penal Code.

The maximum penalty prescribed by Parliament for the offence of burglary under section 299 (a) of the Penal Code is life imprisonment.

The maximum penalty for the offence of house breaking and committing a felony is 14 years imprisonment.

Particulars of the burglary charge are;

"That Rodney Adam of Ambu village at Felix Sede dwelling house, Ababa village in the Malaita Province on the 31st January 2020 in the night did break and enter the dwelling house of a person namely Felix Sede with intent to commit a felony therein to wit simple larceny by stealing 1 x portable stove, value of \$135.00, 1 x flat TV screen worth \$3,800.00, the properties of Felix Sede."

The relevant facts

On the night of the 31st January 2020, the accused climbed over the 3 meter high fence to gain entry into the compound of the complainant. The accused then pushed the door and unloosen the rope that the complainant used to lock the door and entered the house. The accused stole a flat 40" full HD TV screen, and a portable stove. The next day the accused sold the stolen items to some people. Police have recovered the stolen items from the persons who bought them from the accused.

Particulars of the first House breaking and committing a felony charge are;

"That Rodney Adam of Ambu village at Francis Ne'e Store in the Malaita Province, on the 27th February 2020 did break and enter a store the property of Francis Ne'e and did commit a felony to wit simple larceny by stealing 3 x bottle wine, 1 x shell money, 2 x packet cigarette and cash of \$450.00, the property of Francis Ne'e".

The relevant facts

On Friday 27th February 2020 between 1:00AM and 3:00AM the defendant entered the complainant's store at Kwaibala. He used a small screw driver and a ring spanner size 12 to break in to the store, through the main door. He stole 3 bottles of wine, 1 shell money, 2 packets of cigarette and \$450.00 cash. The shell money and \$400.00 cash were recovered after the incident.

Particulars of the second House breaking and committing a felony charge are;

"That Rodney Adam of Ambu village at DPF Store, Auki, in the Malaita Province, on a date unknown between the 31st day of May 2020 and the 02nd day of June 2020, did break and enter a store the property of Philip SODEN and did commit a felony, simple larceny therein to wit stealing cash of \$200,000.00, 2 x sleeve cigarette, 1 x Adidas bag and 2 x iPhone touch screen phones, the properties of Philip SODEN".

The relevant facts

On 31st May 2020 at about 4:00 am in the morning the Complainant received a phone call to inform him that there was a break and enter incident at his shop. When the complainant arrived at his shop, he saw that the shop was already opened although the main gate was still closed. The accused gained entry to the complainant's shop by bending the shop's back door's padlock. The accused stole \$200,000.00 cash, a black bag, two sleeves of cigarette and two iPhone touch screen mobile phones. The Auki Police were informed that the defendant was about to board the MV Pelican Express to Honiara. Auki Police contacted Honiara Police who arrested the defendant when he arrived in Honiara and recovered \$89,625.00 from the defendant. During the course of the investigation, the Police recovered monies from other persons whom the defendant had given monies to. The two iPhones were also recovered. The total amount of monies recovered was \$143,078.00. The amount of \$56,925.00 was never recovered.

Submission by Auki Police Prosecutor (Noel Aukwai)

Staff Sergeant Noel Aukwai representing Auki Police Prosecution submitted that the Court take into account the need for general and specific deterrence, the need for appropriate retribution to punish the defendant and to balance this with any prospects for rehabilitation by the defendant.

He submitted that the prevalence of this type of offence in the community, has resulted in property owners using metal barricades

around their buildings and some property owners have gone to the extent of using barbed wires around the roof tops of their buildings. This, he submits should give the Courts a clear picture that something is not right and, that, members of the community including investors and business houses are now worried about the safety of their properties.

The Prosecutor pointed out in his submission that the accused has a previous conviction for the offence of Simple larceny. He was convicted in 2018 and sentenced to 2 years imprisonment.

The Prosecutor submitted that taking into account the facts or circumstances of the offendings, the starting point for the burglary charge should be one of 4 years imprisonment and the starting point for the housebreaking offences should be 3 years imprisonment.

Mitigation and sentencing submission by Defence

Mr. Male, Counsel for the accused informed the Court that the accused is 21 years old, single and is the eldest child in a family of two children. He also informed the Court that the accused resides with his family and assist his sister who attends secondary school and also his mother who is responsible for the household chores and supporting the accused's old father who has an amputated leg. The Court accept that any sentence imposed on the accused will certainly have an impact on his family but, this is a consequence that the accused should have thought about when he embarked on his planned unlawful activities for which he is now appearing for sentencing.

Counsel submitted that the Court should also consider the pleas of guilty entered by the accused at the first available opportunity.

Counsel Male also urged the Court take into account the fact that the accused had co-operated with the Police during their investigation.

Mr. Male also submitted that the accused is young man who still has a long future ahead.

In relation to the house breaking offence against the Complainant Francis Ne'e, he submitted that the Court to consider that Police have recovered the shell money and \$400.00 cash.

In relation to the housebreaking offence against the Complainant Philip Soden, Counsel submitted that the items had been recovered by the Police sometimes in June 2020.

In the breaking offence against Felix Sede, Counsel informed the Court that Police had recovered the 40 inches full HD Led LCD TV screen plus the portable stove on the next day after the incident.

The Defence Counsel also submitted that the accused had reconciled with two of the Complainants.

Counsel submitted that the accused had spent 4 months, 2 weeks and 2 days on pre-trial detention and he argued that should be sufficient punishment and rehabilitation period for the accused.

Sentencing remarks (including aggravating and mitigating factors)

The burglary offence was committed by the defendant on 31st January 2020. The first break and enter offence was committed on 27th February 2020. The second break and enter offence was committed on an unknown date between the 31st of May 2020 and 2nd June 2020. These offences were committed within a period of 4 months. The manner in which he committed these offences, mostly during odd hours of the night, when people were believed to be sleeping shows clearly that he had pre-planned the offendings.

It is submitted by the Prosecution that the defendant has a previous conviction for the offence of Simple larceny. He was convicted and sentenced to 2 years imprisonment in 2018 by the Magistrate's Court. This record appears not to be contested by the defence therefore, the Court is satisfied that the defendant has a prior conviction for Simple larceny to which he was sentenced to 2 years imprisonment. He is not a first time offender and therefore the discount normally accorded to a first offender cannot be accorded to him.

The re-offendings in similar fashion, not long after he had been convicted and sentenced for 2 years imprisonment shows that the sentence of 2 years imprisonment had not dissuaded him from engaging in similar offending. He was willing to reoffend without having any regard at all to the consequences of his actions on himself, his only sister and his parents. Whilst on this previous conviction, I am guided by the well settled principle as emphasized in **R v Henry Su'umania** (Unreported HCSI-CRC 00287) by Ward CJ as he then was that "the court must be careful not to sentence the accused for his previous convictions".

He, clearly had no regard and respect for the Complainants and their properties. The accused had sold some of the items stolen to some people. This is a clearly indication of someone who is willing to sell stolen properties for his own benefit. This is a lazy, dishonest and selfish way to support oneself. He is a young man full of energy and should utilize his physical capability in lawful ways to earn money to support him and his family. The Court is well aware of Public disapproval of this kind of behaviour and has duty to express that in the sentence that will be imposed.

The Complainant Philip Soden had lost an amount of \$56,925.00 which was never recovered. This is a substantial loss to the complainant.

The maximum penalties for these offences reflects how serious Legislators view these type of offences.

In almost all cases of burglary and break and enter offences, immediate custodial sentences have been imposed. This case is of no exception. In all the present offences, immediate custodial sentences are warranted. The issue for the Court is the length of the custodial sentences and how they should be served.

The mitigating factors present in this case must also be considered against the facts and the aggravating factors.

The Court accept that the accused had admitted his wrong doings by pleading guilty to the charges at the first available opportunity. It is a trite principle that those who pleaded guilty at the first opportunity are entitled to a reduction in sentence. The accused is entitled to a reduction in sentence.

The Court accept that the accused is a youthful offender who has a long future ahead of him.

The Court accept that the accused had co-operated with the Police during their investigation and therefore, credit is due for that.

The Court was informed that the accused had reconciled with two of the Complainants. The significance of that reconciliation is that the two complainants had resolved the feeling of animosity that existed between them and the accused but it cannot sway the Court from imposing any sentence considered to be the appropriate sentence.

I do not think that a suspended sentence as requested by the Defence is the appropriate sentence in this case.

Sentence orders

In the circumstances of this case, I am of the view that the imposition of an immediate custodial which is punitive and deterrent sentence is appropriate. I will impose the following sentences;

For the offence of burglary, the accused is sentenced to 12 months imprisonment.

For the housebreaking and committing a felony in February 27th 2020, 12 months imprisonment.

For the housebreaking and committing a felony on an unknown date between 31st May 2020 and 2nd June 2020, 3 years imprisonment.

All the sentences will run consecutively to each other. The total sentence is five (5) years imprisonment.

Having looked back at the total sentence and considering the principle of totality, I order that 12 months of will be suspended on good behaviour for a period of 2 years. The 12 months suspension will commence when he is released from prison after serving the 4 years imprisonment.

Time spent in custody on pre-trial detention is to be taken into account.

