

Issued
10/12/20
CMC-CRC No: 949/2020



IN THE CENTRAL MAGISTRATE'S COURT
OF SOLOMON ISLANDS

CRIMINAL JURISDICTION

Criminal Case No: 949 of 2020

REGINA

v

R.M

Date of Hearing: 3 December 2020
Date of Sentence: 10 December 2020

Mr. Paul Junior Fanasia for the Prosecution
Ms. Rochelle Palmer for the Juvenile Offender

SENTENCE

A. BACKGROUND

1. The name and the identity of this juvenile offender will be suppressed. He will be referred to as "R.M" for this proceeding. In furtherance of this order, the names and addresses of his parents will also be suppressed unless ordered otherwise by the Court.
2. R.M was initially charged and remanded in custody for two charges of grievous harm, contrary to section 226 of the **Penal Code**. On 26 November 2020, those charges were withdrawn under section 190 (2)(b)(i) of the **Criminal Procedure Code** and substituted with two charges or counts of unlawful wounding, contrary to section 229 of the **Penal Code**. On that same occasion, he was arraigned and pleaded guilty to those substituted charges.

3. The unlawful wounding charges involved this juvenile used a kitchen knife to stab John Tua on his upper right back shoulder. With that same knife, he also inflicted injury to the left eye-brow of another victim, Romano Toroi. This wounding incident occurred at the same time at Windvalley area in West Honiara in the early hours of 27 September 2020.
4. By pleading guilty, he therefore agreed and admitted the commission of the offences. His matter was adjourned to 3 December 2020 for sentencing submissions and was subsequently adjourned to today, 10 December 2020, for the Court to deliver its sentence. This is the Court's decree on sentence for this juvenile offender.

B. SUMMARY OF THE FACTS

5. In the early hours of 27 September 2020 between 4:00am to 5:00am, R.M was drunk and was walking along the Windvalley Road, heading back to his parent's residence. On his way, he came across a group of four boys namely; John Tua (first victim), Romano Toroi (second victim), Junior Amoi Patrick and John Gere. Those boys were also drunk and had been drinking since the evening of the previous day.
6. R.M asked them for a cigarette. They responded that they did not have cigarette. R.M asked again and they said the same thing to him. Shortly after, an argument then started between R.M and one them, Junior Amoi Patrick, which resulted in Junior punched R.M. R.M fell to the ground as a result of the punch.
7. The second victim, Romano, approached R.M to give him a cigarette but R.M grabbed that cigarette and threw it at John. R.M instantly reached for his pocket and pulled out a kitchen knife and stabbed John on his upper right back shoulder. He then moved to Romano and punched him. Romano also fell to the ground.
8. R.M then reached for Romano's black bag strapped to his body and cut it with the same knife. And it was during the course of cutting the strap that the knife slid and inflicted the left-eyebrow of Romano.

9. The victims thereafter attended for medical treatment following the incident. According to the medical report, the first victim, John, sustained 4cm x 3cm x 3cm deep horizontal wound. The wound was sutured and he was discharged without admission. The second victim's injury (Romano) was described as a laceration to his upper left eye, measured 3cm x 2cm x 1.5cm. It was also sutured and he was discharged without admission.
10. Following the incident, the family of R.M paid compensation in the form of one 9 feet shell money and \$1,000 to the family members of the two victims. Reconciliation occurred. Following the reconciliation, the relationship between the conflicting parties is now in good terms.
11. R.M was arrested on the same day (27/09/2020) and placed in custody. On the next day, 28 September 2020, he was brought to the Central Magistrate's Court and remanded for prosecution. Since then, a total of about 75 days had been spent in custody which is equivalent to 2 months and 15 days.

C. UNLAWFUL WOUNDING A GRAVE CRIME UNDER THE JUVENILE OFFENDERS ACT [CAP. 14]

12. R.M is charged with two counts of unlawful wounding, contrary to section 229 of the **Penal Code**, which states:

“229. Any person who unlawfully wounds another is guilty of a misdemeanor and shall be liable to imprisonment for five years.”

13. Although the offence of unlawful wounding under the **Penal Code** is a misdemeanour, Schedule 2 of the **Juvenile Offenders Act [Cap.14]** recognises it a grave crime in so far as juvenile offending is viewed. It is a grave crime because it is derivative of a violent act or omission that should not be exhibited by children or young persons in their early ages. The intention of the legislator is very clear in this to regard unlawful wounding as a serious offence with anticipated severe consequences if committed by a juvenile.

14. For grave crimes, a juvenile will no longer continue to hide behind the cloak of youthfulness to avoid punishment, but must be prepared to face the consequences prescribed by the law. Therefore, as a matter of caution, children or young people should not be tempted or motivated to involve in violent crimes as a way of doing "life experiences" from knowledge gained from movies or other sources, that can cause serious injury on others. The law simply prohibited this from their inchoate life experiences.
15. By his own admission of the charges, I am satisfied that he has committed a grave crime proscribed by the law. Therefore, regardless of whether he is a juvenile, the sentence to be imposed must reflect the objective seriousness of this offence and must also be proportionate to his culpability when committing the offence.

D. MITIGATING AND AGGRAVATING FACTORS

16. There are factors of mitigation in this case. First, this offender pleaded guilty to the charges which resulted in the matter concluded without going to trial. Ordinarily, this saves the Court's time, resources and finances especially during this financially difficult situation faced by the country in light of the Covid-19 pandemic. His guilty plea is an outward demonstration of his sorry, remorse and genuine contrition as a result of the offending. He also expressly said in Court that he was sorry for what he had done to the victims. Ordinarily, young people learnt from their mistakes and this offender is no exception. Second, he is a first time offender. It is trite law that a discounted sentence is usually given to a first time offender compared to a repeated offender. He is therefore entitled to that benefit. Third, there was compensation in the form of a 9 feet shell money and \$1,000 paid to the family members of the victims. As a result, both families have reconciled and their relationship is now in good terms. Fourth, the offender is a 17 year old juvenile. The law of this country has recognised that youth is a mitigating factor and therefore, he is entitled to that benefit. See: *Bati v DPP* [1985-1986] SILR 268 and *Oifa v R* [2012] SBHC 66.
17. On the other hand, I have noted few aggravating factors as well. First, he committed the offence with the use of a kitchen knife. A kitchen knife is a weapon as defined under section 84 (6) of the Penal Code. It can cause serious or fatal injury if it is

used against another person like the present case. Second, the offender was also drunk when he attacked the two victims with the knife. It is an aggravating factor because of his behaviour and actions when committing the offence can be frightening and intimidating when observed by a bystander. Third, the facts showed that the two victims never provoked the offender. It was Junior who provoked and assaulted him. Hence, he inflicted injuries to the two innocent victims, of which, one of them was generous to offer him free cigarette. He injured him instead. In my view, the attacked on the two victims was unprovoked and callous. Finally, there were two victims who suffered injuries which require immediate medical assistance from the incident caused by the offender. He should stop and reconsider what he had done was wrong after he knifed John, yet he moved to Romano to advance his arrogance and resulted in another victim being derived from his action.

E. THE SOCIAL WELFARE RPORT

18. The Social Welfare Report of this offender is made available to the Court and is very helpful in determining the appropriate sentence for this offender. The Report has highlighted that he did not attend school but stayed at home to help his mother and siblings. However, the Report highlighted that he is an obedient child to his mother and siblings. He is a good boy and "always eager to help his sisters and brothers with chores they have for him and he always cooks the daily meals of his mother and sisters" [at page 3 of Report]. He is the first person in their family to have gone to jail. His life and behaviour started to change after his father died last year.
19. The Report also highlighted that he committed these offences as a result of him being influenced by his peers into drinking alcohol. The Report recommends the Court to impose a sentence that would foster quick reunion with his family and affording him another chance to learn from his mistakes. However, there is no specific recommendation of the form of sentence the Court should impose on him.

F. SENTENCING CONSIDERATIONS

20. R.M is no longer a child but a young person at the time of the offending as per section 2 of the **Juvenile Offenders Act**. Section 12 (2) of the **Juvenile Offenders**

Act states "(2) No young person shall be sentenced to imprisonment if he can be suitably dealt with in any other way specified in section 16."

21. Section 16 provides for the following sentencing methods of dealing with a juvenile:
 - (a) by dismissing the case; or
 - (b) by discharging the offender on his entering into a recognisance, with or without sureties; or
 - (c) by dealing with the offender under the provisions of the Probation of Offenders Act; or
 - (d) by committing the offender to the care of a relative or other fit person; or
 - (e) by ordering the offender to pay a fine, damages or costs; or
 - (f) by ordering the parent or guardian of the offender to pay a fine, damages or costs; or
 - (g) by ordering the parent or guardian of the offender to give security for his good behaviour; or
 - (h) by directing that he be released on his entering into a bond to appear and receive sentence when called upon; or
 - (i) by committing the offender to custody in a place of detention; or
 - (j) where the offender is a young person, by sentencing him to imprisonment; or
 - (k) by dealing with the case in any other manner in which it may be legally dealt with.

22. The maximum penalty for unlawful wounding committed by this offender is 5 years imprisonment. For the purpose of deciding the sentence, this Court must ensure that he must understand his responsibility from his own action if that act had infringed the law. As a rule of thumb, the sentence to be imposed on this juvenile must be lower than an adult offender for the same offence. This practice is universally recognised and applied.

23. Also, any sentence imposed on this offender must not be disproportionate to his culpability at the time of the offending. Any departure from this will harm the best

interest or the wellbeing of the offender. The best interest of the offender and the need for rehabilitation therefore become the central considerations when determining his sentence.

24. I understand his best interest is not to be separated or even alienated from his family for a considerable length of time. Any sentence passed by the Court must strive to promote his rehabilitation and reintegration into his community and family circle. However, this interest has to be balanced against the interest of the two victims who suffered the injuries as a result of his action.
25. For grave crimes under the **Juvenile Offenders Act**, this Court will fail in its task if nothing is mentioned about the interest of the two victims. These two victims would not want this juvenile to walk out of the cell feeling triumphed and unpunished. There must be an imposition of accountability in terms of his behavioural management and control so that another victim is not derived from his action during his reintegration into the community.
26. Using of knives or any dangerous weapons by young persons with the intent to harm others are inappropriate forms of behaviour. A community can be dangerous for this if there is no metal detector around. All communities in our country will agree that they deplore this kind of attitude involving juveniles carrying dangerous weapons and roaming in the neighbourhoods at odd hours of the night when under the influence of liquor.
27. For the offender herein, stabbing another person with a knife is not a game, or a prank, or a practical joke or part of becoming a man. It is a crime. If you commit it, the high odds are that you will be sent to jail which is a sheer waste of life and prospect for you. You are too young to be sent to jail. Jail is not a good place. It is meant for criminals. It is because of your own fault that has landed you there. Learn from this incident and change your behaviour for your better future.
28. The parents and elderly members of the family of this juvenile should also be blamed for this. I say this because they have the duty to ensure this juvenile should be at home and not be allowed to drink alcohol with his peers during the odd hours

of the night. There are many parents or elders in our communities who spend more time taking care of flowers and gardens but spend little time on their children so that they grow up as law abiding persons and leaders of our country.

29. In **R v Ludawane [2010] SBHC 128**, Palmer CJ, made this remarks that I think is important to re-echo to the family members of this offender regarding the need for them to do more in the behavioral molding and teaching of this offender [at page 2]:

“The most important gift any parent can be given is a son or a daughter. “Children are an heritage from the Lord, and the fruit of the womb is his reward” (Psalm 127:3). The word "heritage" means a blessing and a gift. Children are not property to do as one pleases, rather you are required to bring them up in the "nurture and admonition of the Lord (Ephesians 6:4)". There are many parents who spend more time taking care of their flowers and gardens, but spend little time on the most valuable gift in their hands, their children. A master carver or painter will spend hours to perfect the image of his carving or painting, how much more should parents on building, mentoring and training their children, so that the right image is produced in their children, based on Christian values and principles, of godliness, righteousness, honesty, love, hard work and truth. There is no perfect parent in this world but God gives his Grace to parents to enable them discharge their parental duties.”

30. The message echoed in **Ludawane** is timely for today’s parents regarding disciplining of children in light of the increase rate of juvenile offending currently faced in the country which if left unaddressed will be disastrous for the future of our children and their children’s children.
31. I have considered all the mitigating and aggravating factors ably submitted to me by the defence and prosecution. This case has to be considered on its own facts and circumstances. It is my view that the society’s stand against this violent crime committed by this juvenile demands custodial sentence. The trauma, anxiety and pain suffered by these two victims provide justification for incarceration. In accordance with section 16 (j) of the **Juvenile Offenders Act [Cap. 14]**, I therefore sentence him to 12 months imprisonment as a starting point for the charge involving

the first victim (John) and 8 months imprisonment starting point for the charge involving the second victim (Romano). I order that 2 months will be added to each sentence as a result of the mitigating and aggravating factors when considered in whole, increasing each count to 14 months and 10 months.

32. The final sentence for this offender is **14 months imprisonment**, both run concurrently. Time spent in custody is to be taken into account.

G. SENTENCING ORDERS

33. I sentence R.M as follows:

1. **Impose 14 months imprisonment.**
2. **Period spent in custody is to be deducted from this sentence.**
3. **14 days right of appeal applies.**



(Augustine S. Aulanga – Principal Magistrate)