

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

Criminal Case No: 941 of 2016

In the Criminal Jurisdiction

BETWEEN: REGINA

V

AND: ROSSLYN AITOREA

Mrs Margaret Suifa'asia for the Crown

Ms Emy Rusi for Defence

Date of sentencing submissions: 10th of November 2020

Date of sentence: 13th of November 2020

SENTENCE

Back-ground

1. Mr Rosslyn Aitorea, you have been charged with one count of careless driving, contrary to section 40 (1) of the Road Transport Act, and one count of dangerous driving, contrary to section 39 of the Road Transport Act.
2. The charge was first initiated on the 27th of November 2016 and you were supposed to appear in court on the 13th of December 2016. On that date, a warrant of arrest was issued against you for non-appearance and from then on, the matter was adjourned generally.
3. The matter resurfaced in court on the 8th of September 2020 after enquiries were made to the criminal registry by the Office of the Director of Public Prosecutions. The matter was then relisted and summons were issued for you to appear in court.
4. On the 8th of September 2020, you indicated that you will be seeking legal assistance, hence I imposed some bail conditions on you to enable the request sought. On that same date, Mr Nickson Tonowane appeared on behalf of his colleague Mrs Suifa'asia and informed the court that she was engaged at the High Court. The matter was further adjourned to the 29th of September 2020, where Ms Rusi of the Public Solicitors Office informed the court that their office will be acting on your behalf, but is still awaiting formal allocation.

5. The disclosures were served on Ms Rusi on the 29th of September 2020 by Ms Pellie who appeared on instructions from Mrs Suifa'asia. The matter was then adjourned to the 13th of October 2020, where Ms Rusi informed the court that the matter had been allocated to her.
6. On the 14th of October 2020, when you were supposed to enter your plea, I was then informed by Ms Naqu who appeared on instructions from Mrs Suifa'asia that there has been an oversight on their part with respect to the disclosures. It turns out that Ms Rusi was only served with the disclosures for one of the counts while disclosures for the other count were never served.
7. In light of that, I enquired into the charge sheet containing the counts at hand. I note that the charge was in the old format previously used before Her Worship, Chief Magistrate Emma Garo came into office. The charge was only signed by the officer laying complaint and was not signed by a Magistrate pursuant to section 76 of the Criminal Procedure Code. Further to this, enquires were also made into the warrant of arrest issued on the 13th of December 2020, where I was informed that it was Ms Mae'ue of the Police Prosecution Department who applied on behalf of the Office of the Director of Public Prosecution, given the absence of the Prosecutor in carriage.
8. You instructed Ms Rusi, that you came to court on that date and made enquires with Officers; Lyndon Adifiaka, Iete Tebakota and Ethel Mae'ue, where they informed you that they do not know about your case. Following that Ms Mae'ue went and applied for a warrant of arrest against you. Sometimes later, you found that a warrant was out for you, hence, you went to the Police Prosecution Department and found that it was Ms Mae'ue who made the application for the warrant of arrest.
9. I then ordered that Ms Mae'ue be summoned to explain for what had happened and for Mrs Suifa'asia to explain why she had not drafted the charge in the required format. The matter was then adjourned to the 19th of October 2020, where both Ms Mae'ue and Mrs Suifa'asia gave their accounts under oath. According to Mae'ue, she appeared on behalf of the prosecutor in carriage (ODPP), since he was not in court. I asked her why she applied for a warrant of arrest right after talking with you since you claimed that she was one of those you enquired about your case with, and she said that she does not know you, or in other words she was not sure about the matter. She knew that you were a police officer but knew nothing further.
10. With respect to Mrs Suifa'asia, her excuse was that she had been engaged at the High Court and has overlooked the need to amend the charge. Further to that, she stated that she was reallocated with the matter towards the end of 2019, after the prosecutor that was previously in carriage of the matter since 2017 had not taken steps to advance the matter. The matter was reallocated to her after Mr Patrick Abe who was previously allocated with the matter, left the ODPP.
11. On the same date, the amended charge was filed and it was read out to you, where not guilty pleas were entered. The matter was adjourned again for a Pre-trial conference hearing (PTC). On the date for PTC, the matter was further adjourned since Ms Rusi was not ready to proceed. On the next date, I was informed that you have indicated changing the not guilty pleas to guilty pleas. I then re-arraigned you and took note of the guilty pleas entered.

12. On the 10th of November 2020, the matter came back to court for sentencing and mitigating submissions. The Crown relied heavily on the written submission that was filed on that day, while Ms Rusi opted to make verbal submissions with respect to the issue of delay.

Maximum Penalty

13. Having covered the back-ground of this case, I will now set out the maximum penalties for the offences at hand. Sections 40 (1) and 39 (1) of the Road Transport Act, and the Penalties and Miscellaneous Amendment Act 2009 sets out the maximum penalties for these offences as follows:
 - (a) Careless driving: 5000 penalty units¹ or six months imprisonment or both²; and
 - (b) Dangerous driving: 5000 penalty units³ or six months imprisonment or both⁴.
14. In my view, I strongly believe that these maximum penalties, are warnings given by our legislators, to prevent us from committing these offences. Furthermore, they signal the level of seriousness involved.

Agreed facts

15. I note from the charge, as well as the agreed facts, that both offending's occurred on separate occasions. The first incident occurred on the 23rd of July 2016, while the second incident occurred on the 26th of November 2016. The first incident occurred when you were driving the vehicle, bearing the registration number: X-1557, along the Tandai Highway, heading up the easterly direction. It was around 3:00 pm when you were said to have collided with another vehicle, owned by one John Kingsley, registered as: MA-3707.
16. The second incident involved the same vehicle you were driving on the 23rd of July 2016. It was around 3:00 am when you were driving the vehicle towards the Florence Young Primary School from the Kukum heights road. Upon reaching the curve above the Ports Authority premises, you drove off the road and slid down the hill.

Analysis

17. The offending's at hand, as stated earlier, are deemed as some of the serious offences under the Road Transport Act.
18. For the offence of careless driving, I am only told about the collision that took place, with no further details of how it actually happened and whether or not the aftermath was severe or minor.
19. Section 40 (1) of the Road Transport Act:
If a person drives a motor vehicle on a road without due care and attention or without reasonable consideration for other persons using the road, he shall be guilty of an offence and liable to a fine of five hundred dollars or to imprisonment for six months⁵.

¹ Penalties and Miscellaneous Amendment Act 2009.

² Section 40 (1) of the Road Transport Act.

³ Above n1.

⁴ Section 39 (b).

⁵ Above n2.

20. Parties would agree with me, that the key words in this section are, **without due care and attention, or without out reasonable consideration.** From the agreed facts tendered, I am unable to see the exact manner of driving you engaged in, which would amount to the key words outlined above. I note that a collision did occur as provided in the agreed facts and while you have pleaded guilty to this, I do not have further evidence that is sufficient to speak for what had happened. The initial charge was laid on the 27th of November 2016, which was already 3 months after the happenings of count one. I expect proper investigations to be carried out through that period of time and documents pertaining to the investigative work to be provided to the court. It seems that this has been the practice for both the Police Prosecutions and Public Prosecutions in terms of careless driving cases. I do not know how they plan on convincing the court with such shallow evidence. I understand that it is the duty of prosecutions to provide all relevant details pertaining to the cases they have before the court. Clearly, I am being denied the opportunity to fully condemn you for your actions, since I am not properly assisted in this regard. However, this does not stop me from pointing out the need for you as a driver to be cautious of how you drive along our public roads.
21. Ms Rusi has touched on the mechanical problems and the urgency that contributed towards the incidents in her mitigating submissions, in my view it would have been proper to have this piece of evidence in the form of a sworn statement. Lawyers must be reminded of the ways in which evidence can be tendered to the court that is by way of sworn statement and by way of consent by both parties. Giving evidence from the bar table is and will not be entertained in my court.
22. If it was indeed true that the vehicle was facing mechanical problems, then why would you risk using it for the second time? Obviously, none of these would have occurred had you taken the time to assess the possible outcomes of your actions before proceeding into doing them.
23. With the years that have past and the limited evidence before me, I can only say that this is one of the cases that was poorly investigated by the Police and was not given the attention it needed by Prosecutions.
24. The same can also be same for the offence of dangerous driving. However, I wish to highlight how your decision to drive the vehicle at the material time has put your life in so much danger. Not only was your life at danger, but those that were living around the place in question. I understand that the incident occurred around a time where people were sleeping, hence the more difficult it would be to escape if you were to crash into any of the nearby houses.
25. Even if I was to rely on the reasons given by Ms Rusi to justify your actions on the dates in question, I would still say that you have turned a blind eye towards the high chances of an accident being caused on your part.
26. In terms of the **aggravating factors** involved, the Crown highlighted the following:
- (a) The seriousness of the offences generally as reflected through their maximum penalties;
 - (b) The fact that the safety of the public was at risk through your actions;

- (c) Your level of culpability, where they submitted that you were a Police Officer when the incidents occurred. Your actions does not reflect well of the position you held as an Officer employed under the Police Force; and
 - (d) The damages caused to two vehicles, which I cannot make a full assessment on, given the fact that nothing to this extent was tendered for my perusal.
27. Further to this, the Crown has identified the delay in having this matter prosecuted as a mitigating factor, as well as the guilty pleas entered.
28. The submissions done on your part identified the following mitigating factors:
- (a) The fact that you are a first time offender;
 - (b) The guilty pleas you entered;
 - (c) The remorse shown on your part;
 - (d) Your cooperation with the Police that is reflected through your faithfulness in coming to court. I note that despite the number of years that have passed, you were still reachable, hence your attendance in court for the past court hearings. This in my view shows your willingness to face the law for actions committed some 3 years ago;
 - (e) Your family circumstances where I am being told that you have three young children whom you are responsible for paying their school fees. Following the incidents in 2016, you became unemployed, and sadly your wife has also left you. Currently you are working as a bus driver to earn your income; and
 - (f)
 - i. The delay in having this matter prosecuted. In this regard, Ms Rusi strongly believes that this matter had been dragged due to the failure of certain officers involved when the warrant of arrest was issued against you on the 13th of December 2016. I also note the instruction given to Ms Pellie by Mrs Suifa'asia, regarding the history of this case during one of the previous mentions.
 - ii. Clearly this matter was dragged due to the lack of commitment shown by the Prosecutor previously in carriage of this matter. I do not seem to understand why any Prosecutor would just pay less or no attention at all to any of the files allocated to him or her and whether such actions have raised concerns on the part of his or her superiors.
 - iii. I also fail to understand why the Police Prosecutors who spoke with you in the court premises on the 13th of December 2016 were not of much assistance to you. Unfortunately, one of the Prosecutors you talked with went to court and applied for a warrant of arrest to be issued against you when she has just spoken with you. Instead of informing the court that you were enquiring about the case earlier, she then applied for a warrant of arrest. I cannot seem to find the right words to explain this kind of action but to only say that this world is full of very irresponsible and unreliable people.
 - iv. Ms Rusi has referred to cases involving the issue of delay, one of which is the case of *Dalo v Reginam*. In that case, the court stated:
*Where there has been serious delay without reasonable explanation, a very substantial reduction of sentence should be considered*⁶.

⁶ [1987] SBHC 15; [1987] SILR 43 (23 June 1987)

- v. I note that the circumstances involved in the case of Dalo, are totally different from the case at hand, however, it is and will always be in the interest of justice, that all Accused persons must be given the opportunity to a fair hearing within a reasonable time as provided for under section 10 (1) of the Constitution of Solomon Islands.
 - vi. From what is before me, I do not seem to find any reasonable excuse that may have warranted the delay in having this matter prosecuted. Clearly, someone was not doing his or her job and nothing was done to address such level of non-performance. The distress caused and experienced throughout the past years, on your part must be taken into account.
29. Ms Rusi then concluded by asking me to invoke section 35 of the Penal Code on the basis of delay. I then raised the fact that the offences at hand are regulatory offences, or strict liability offences, hence, section 35 of the Penal Code would not be appropriate. She replied that delay should be taken as a factor to invoke section 35 of the penal Code.
30. The case of **Tapoika v Regina**⁷ was cited to support the argument in hand, however, I am not of the view that this case would support her argument and further maintain that section 35 of the Penal Code does not apply to regulatory offences such as those under the Road Transport Act, HCC Ordinances as well as the State of Emergency Orders made by the Prime Minister earlier this year.
31. Having refused the argument advanced by Ms Rusi in light of section **35 of the Penal Code**, I now enter conviction against you.
32. As always, the court must determine the outcome of a case based on its own set of facts and circumstances. From the maximum penalties of each of these offences, you would note that they both carry 5000 penalty units and an alternative sentence of six months imprisonment. Obviously, the delay in having this matter prosecuted, is well beyond the alternative sentence of six months.

⁷ Mick Pongi Tapoika v Regina HCSI CRC NO. 693 of 2019.

33. Hence, having weighed the entirety of this matter, I am of the view that the appropriate sentence I should impose to address the actions you were charged for, and for the need to ensure that responsible Police officers and Prosecutors carry out their jobs accordingly, and to send out a message of both specific and general deterrence, the need for rehabilitation and retribution, is a sentence pursuant to section 32 (1) of the Penal Code.

34. With this, I now sentence you as follows:

ORDERS:

- (i) For the count of careless driving, you are to enter a bond of good behaviour for a period of six months in the sum of SBDS1000.00;
- (ii) For the count of dangerous driving, you are to enter a bond of good behaviour for a period of six months in the sum of SBDS1000.00;
- (iii) No orders for disqualification of driving license; and
- (iv) Right of appeal applies within 14 day from today.

Dated this 13th day of November 2020.

