



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

(Criminal Jurisdiction)

Criminal Case No: 540 of 2019

**REGINA**

-V-

**BILLY BUGA**

Coram: HOLLISON F (PRINCIPAL MAGISTRATE)

*Appearances:*

Mr Andrew Meioko, Senior Legal Officer, ODPP, for the Crown

Mr Daniel Kwalai, Senior Legal Officer, PSO, for the Defendant

**Date of Ruling: 20<sup>th</sup> January 2020**

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

**SENTENCE**

1. The Magistrates Court Criminal Case Number 540 of 2019 (“CC No. 540 of 2019”) and Criminal Case No. 791 of 2019 (“CC No. 791 of 2019”) were consolidated as they both deal with the same defendant Mr Billy Buga. In CC No. 540 of 2019, Mr Buga pleaded guilty to one count of Burglary contrary to section 299(a) of the *Penal Code* [Cap 26. However, in CC No. 791 of 2019, Mr Buga pleaded not guilty to one count of Burglary contrary to section 299(a) of the *Penal Code* [Cap 26], and the matter is set for trial from the 20<sup>th</sup> to 24<sup>th</sup> January 2020.
2. I now convict Mr Buga for the one count of burglary charge contrary to section 299(a) of the *Penal Code* [Cap 26] in CC No. 540 of 2019.
3. I will now proceed to deliver his sentence in CC No. 540 of 2019.

### **Basic background of the defendant and the Complainant**

4. The defendant Mr Billy Buga is from Fourau Village, North East Malaita, Malaita Province. He is 29 years old, unemployed and resides at Green Valley, East Honiara on Guadalcanal.
5. The complainant is an Australian national by the name of Connor Carson who lives at Ngossi, West Honiara. She is an advisor for the Australian Federal Police ("AFP"), working under the Solomon Islands Police Development Program here in Solomon Islands.

### **Facts**

6. On or about the 11<sup>th</sup> of July 2019, between 11:00am and 2:00am, the defendant in the company of another person broke and entered into the house of Conner Carson at Ngossi, West Honiara, and stole the following items:
  - 1) 1 x iPhone 6
  - 2) 1 x iPhone 7
  - 3) 1 x iPad Pro
  - 4) 1 x Apple Mac Laptop
  - 5) 1 x iPhone 7
  - 6) 1 x iPhone 6
  - 7) 1 x speaker charger
  - 8) 1 x computer charger
  - 9) 2 x iPhone chargers
  - 10) 1 x baby bag
7. During the time of the offence, the complainant and her family were asleep inside the house.
8. The defendant was arrested on the 14<sup>th</sup> July 2019 at Kukum Market in Central Honiara. When the Police searched the defendant they found two of the stolen iPhones and recovered the Mac Air Laptop from his brother's house. All the other items were recovered.
9. The defendant participated in a caution interview with the Police on the 15<sup>th</sup> July 2019 at White River Police Station in West Honiara. The defendant admitted that he opened the door of the house by pushing a knife to where the door bolt were and opened the door.

### **DISCUSSION AND ANALYSIS**

10. In sentencing, the classic principles of sentencing such as punishment, retribution, deterrence and rehabilitation must be taken into account.
11. Moreover, the sentence that will be issued must always commensurate with the severity of the offence.
12. It is a well-established practice that each case must be decided based on its own merits, facts and circumstances.

Burglary Contrary to section 299 of the Penal Code [Cap 26]

13. Section 299(a) of the *Penal Code* [Cap 26]<sup>1</sup> provides as follows:

*Burglary*

299. Any person who in the night -  
(a) breaks and enters the dwelling-house of another with intent to commit any felony therein; or  
is guilty of the felony called burglary, and shall be liable to imprisonment for life.

14. The maximum sentences of life imprisonment shows that this is one of the most serious offences prescribed under the *Penal Code* [Cap 26].

Aggravating features

15. The aggravating factors are as follows:

**[1] Maximum Sentence**

16. The maximum sentence for burglary contrary to section 299(a) of the *Penal Code* [Cap 26] is life imprisonment and this alone shows how serious this offence is.

**[2] The use of weapon.**

17. The defendant was armed with a knife and it was used in the offending. The weapon was used to open the door in which the defendant and his accomplice entered into the house. In *Regina v Anika* [2008] SBHC 91; HCSI-Criminal Review Case 762 of 2008 (21 November 2008)<sup>2</sup>; the defendants pleaded guilty to the offence of store breaking. Both accused together with the other boys climbed up the copper fence of the compound to gain entry into the shop. A pinch bar was used to gain entry into the main shop. The Court in that case took into account the presence of aggravating factors such as the presence and support of more than one person, pre-planning, and the manner and degree of breaking was said to be “quite high” or serious which involved the use of a weapon. The sentences of the defendants were increased to 3 years of imprisonment after the learned Judge, his Lordship Faulkner J considered that the initial 2 years suspended sentence imposed by the Magistrates Court as “very lenient.”

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<sup>1</sup> *Penal Code* [Cap 26]

<sup>2</sup> *Regina v Anika* [2008] SBHC 91; HCSI-Criminal Review Case 762 of 2008 (21 November 2008)

[3] Defendant's previous convictions.

18. The defendant has a string of previous conviction since 2003 for very similar offences. the most common being that of burglary. Since 2007, he had been in and out of prison for this same offence. The longest period of the sentence that he has served at one time was more than 4 years, but it did not take him that long to commit further offences again as soon as he is released. I agree with counsel Meioko that the clang of the prison gates principle has not worked and proved futile for Mr Buga. The couple of times that Mr Buga had been sent to the prison for committing various criminal offences have very little effect in terms of Mr Buga's prospects to become a transformed person and for rehabilitation purposes. In *Pitamama v Regina* [2005] SBHC 45; HCSI-CRC 003 of 2005 (11 March 2005)<sup>3</sup>, 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)*

19. In the *Pitamama case*<sup>4</sup>, his Lordship Palmer CJ, also made reference to the case of *Kaboa-v-R (1980)* Solomon Islands Law Report 42-46, in which the Court of Appeal held as follows:

*'Some mention need also be made of the reliance placed on the appellant's previous conviction. The proper scope for such consideration was discussed by this court in *Peter Rimae-v-Reginam*, Criminal Appeal No. 62 of 1974, Judgment delivered by Gould P. On the 17<sup>th</sup> March 1975, Reference was made to *Betteridge 1943 28 CrAppR 171* and *Casey 1931 NZGLR 289*-the Court should be careful to see that a sentence of a prisoner previously convicted is not increased beyond what would be appropriate to the facts merely because of previous convictions. Previous convictions are relevant to establish a prisoner's character."*

[4] The offence was committed at night.

20. The offence was committed at night in the very early hours of the morning (between 1:00am and 2:00am). Mr Buga and his accomplice must have known that most people would be expected to be soundly asleep in their beds in such times, and that would be a perfect timing to carry out their unlawful purpose and stealing.
21. In *Regina v Funifaka* [1997] SBHC 31; HC-CRC-033 of 1996 (6 June 1997)<sup>5</sup>, Palmer J (as he then was) stated at page 16-17 as follows:

<sup>3</sup> *Pitamama v Regina* [2005] SBHC 45; HCSI-CRC 003 of 2005 (11 March 2005)

<sup>4</sup> *Pitamama v Regina* [2005] SBHC 45; HCSI-CRC 003 of 2005 (11 March 2005)

<sup>5</sup> *Regina v Funifaka* [1997] SBHC 31; HC-CRC 033 of 1996 (6 June 1997)

*In those circumstances, I am satisfied an immediate custodial sentence must be expected and imposed. The message must be made clear and plain that those who venture out at night, armed and break into peoples' homes and attack people in their homes must expect to be sent to prison. People are entitled to feel safe and secure in their homes (whether they have a fence around and good locks on their doors or not), and to have a good nights sleep and rest without being disturbed. It is plain common sense that a person's house is out of bounds to anyone whether in custom, the law or whatever religious beliefs that one might have. (In English law, an Englishman's home is known as his castle, a place of refuge and safety). It is the same here, and the courts have a duty to protect society from such persons with criminal minds. The element of deterrence therefore must be borne in mind and applied so that at least persons who are minded to do such things can at least think twice or again before venturing out in such activities knowing fully well what they might face if brought to the courts.*

**[5] The offence was committed in the company of another person.**

22. The defendant was accompanied by another person to commit or carry out their unlawful schemes and this is an aggravation.

**[6] Pre-Meditation and Planning**

23. The manner in which the offence was carried out shows some degree of planning and premeditation. In *Regina v Bade* [1988] SPLawRp 12; [1988] SPLR 348 (21 December 1988)<sup>6</sup>; it was enunciated that when a person commits an offence with the company of others and it involves the use of masks and weapons or “*similar escalations in seriousness of the sentence are present, the penalty should be further increased...*”.

**Mitigating Features**

24. The mitigating factors as follows:

**[1] Early guilty plea.**

25. Mr Buga entered a guilty plea at an early stage. This shows that he is remorseful for the offence that he committed. He should be given credit for this.
26. In *Pitamama v Regina* [2005] SBHC 45; HCSI-CRC 003 of 2005 (11 March 2005)<sup>7</sup>, the High Court said:

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<sup>6</sup> In *Regina v Bade* [1988] SPLawRp 12; [1988] SPLR 348 (21 December 1988)

<sup>7</sup> *Pitamama v Regina* [2005] SBHC 45; HCSI-CRC 003 of 2005 (11 March 2005)

*"In the circumstances of this case, the Appellant did enter a guilty plea at the outset. That ought to have been taken into account even in the worst of cases. I note the learned Magistrate did take his plea into account but did not expressly indicate if this was being taken into account in the overall assessment of the sentence to be imposed. It is trite to point out that a defendant who has pleaded guilty may be granted some reduction in what would otherwise have been proper sentence for the offence. The extent of the reduction may be between one quarter and one third of what would otherwise have been the sentence, at the discretion of the sentencer."*

#### **[2] Pre-Sentence Custody**

27. The defendant has been in custody since he was remanded on 14<sup>th</sup> July 2019. Hence, whatever sentence that will be imposed should be backdated to the date when the defendant was first remanded.

#### **[3] All Properties are recovered**

28. All the items were recovered. Mr Kwalai submitted that would mean that there was no loss to the complainants from this offending, hence, this is a mitigating factor and should be factored in as well. Whilst I agree and I will take this into account, this should not overshadow the fact that what he committed is very serious and that the offence of burglary itself constitute criminal trespass which is a breach of fundamental constitutional rights such as the rights to privacy and the rights to protection of property. All the properties were recovered because of swift response from the Police and a good consideration would be whether or not the defendant would have returned those properties voluntarily had he not been quickly investigated and arrested. Based on his previous convictions, there is a very low chance that Mr Buga would have voluntarily returned the said properties if the Police had not intervened.

#### **[4] Cooperation with Police**

29. The defendant co-operated with the Police during the interview and assisted the Police in their investigations. I think the fact that he admitted committing this offence during the caution interview and further, the fact that he entered an early guilty plea is consistent with that admission and he is entitled to an allowance for this.

#### **Sentencing Tariffs for the offence of Burglary**

30. In *Regina v Bade* [1988] SPLawRp 12; [1988] SPLR 348 (21 December 1988)<sup>8</sup>, the learned Judge, his Lordship Ward CJ stated as follows:

*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 little or no value to the thief, general ransacking of the house, wanton damage, pre-planning,*

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<sup>8</sup> *Regina v Bade* [1988] SPLawRp 12; [1988] SPLR 348 (21 December 1988)

*and the degree of breaking necessary to gain entry. If such matters are 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.*

31. In *Pitamama – v- Regina* [2005]<sup>9</sup>, the Magistrates Court initially sentenced the offender to 4 years imprisonment for each count, however, it was reduced to 3 years by his Lordship Chief Justice Sir Palmer. The offender was sentenced to 3 years imprisonment for house breaking and 12 months for simple larceny which were made concurrent. His Lordship Palmer CJ made the following remarks:

*The only grounds worth serious consideration to that extent, if any error of law may have been committed warranting intervention are grounds 1 and 2. In *Bade's Case* (ibid) his Lordship Ward CJ correctly pointed out the appropriate guidelines to be adopted when considering offences of house breaking; the range is between 2 – 4 years. Where aggravating features are present, such as the use of masks, weapons, 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 starting point in this case would be to ask if there were aggravating features present which justified the imposition of a sentence not less than four years. Apart from the pre-planning and the fact that the offence was committed in the precincts of the magistrate's court, no other aggravating features were present. On the other hand, there were mitigating factors present which ought to have been taken into account when assessing the appropriate sentence to be imposed. These included the timely guilty plea which ought to be reflected in some discount being given apart from the fact that ultimately a substantial part was recovered as well as the fact that there were some indications that the Appellant did make some attempt to try and get some hold back into leading a normal life as a law abiding citizen. I am satisfied insufficient consideration/account were given to those factors and which ultimately would have reduced sentence to one of 3 years.*

32. In *Regina v Tonto* [2017] SBMC 60; Criminal Case 1220 of 2017 (12 December 2017),<sup>10</sup> the defendant pleaded guilty to two counts of burglary and one count larceny in a dwelling house. For both offences of burglary, the defendant had broken and entered into the kitchen of two different complainants for the purpose of stealing. On the first incident, the defendant stole a generator, two cooking pots and for the third incident, he and other accomplice stole sets of Vanuatu cooking pots, spoons, dishes, knives and a large telecom umbrella. For the first count of Burglary, the court sentenced the defendant to 2 years and 2 months imprisonment. For the third count, the court held that the offending was aggravated because the defendant never learnt and continued to indulge in carrying out burglary offending against people's properties. He was sentenced to 2 and ½ years imprisonment. The sentences were ordered to be served consecutively since they were committed on separate occasions and against different victims.
33. In *Regina v Waiti* [2016] SBMC 17; Criminal Case 1534 of 2015 (6 July 2016)<sup>11</sup>, the defendant pleaded guilty to one count of burglary contrary to section 299(1) of the *Penal Code* [Cap 26]. The offence involved the illegal entry into Mr Anita's residence and his personal properties were also stolen at Kwaio Vally, East Honiara. The defendant was sentenced to 2 and ½ years of imprisonment.

<sup>9</sup> *Pitamama v Regina* [2005] SBHC 45; HCSI-CRC 003 of 2005 (11 March 2005).

<sup>10</sup> *Regina v Tonto* [2017] SBMC 60; Criminal Case 1220 of 2017 (12 December 2017)

<sup>11</sup> *Regina v Waiti* [2016] SBMC 17; Criminal Case 1534 of 2015 (6 July 2016)

34. In *R v Meke* [2005] SBMC 7; GMC 215 of 2005 (25 October 2005)<sup>12</sup>, the defendant pleaded guilty to the charge of breaking and entering a dwelling house at night and stole property therefrom contrary to section 229 of the *Penal Code* [Cap 26]. The Court imposed a 3 and ½ years' imprisonment against the defendant.
35. In *R v Dani and Aidiana* [2004] SBCA 16; CA-CRAC 011 of 2004 (11 November 2004)<sup>13</sup>, this is an appeal against the sentences that were issued by the High Court dated 29<sup>th</sup> June 2004. In the proceedings, the five appellants were each sentenced to six years imprisonment for an offence of burglary. The Court of Appeal, however, allowed the appeal, and the following amended sentences were imposed:
- 1) With respect to the Appellant Mr Eddie Funubana, for the offence of burglary contrary to section 299(a) of the *Penal Code*[Cap 26]-4 years imprisonment
  - 2) With respect to the Appellants Seni Figuomea and Wilson Iro (aka Fred Fale), for the offence of burglary contrary to section 229(a) of the *Penal Code*[Cap 26]-4 years imprisonment
  - 3) With respect to the Appellants Peter Dani and Joe Aidiana, for the offence of burglary contrary to section 299(a) of the *Penal Code* [Cap 26]-3 years imprisonment

#### STARTING POINT AND OTHER CONSIDERATIONS

36. So for a normal burglary case according to the case authorities cited above an immediate custodial sentence is inevitable.
37. As a subordinate court, the Magistrates Court is bound by the Judgments in the High Court and the Court of Appeal of Solomon Islands.
38. In this present case, the comments of Ward CJ in the *Bade's case* stated that "where the burglary is not aggravated in any way, the starting point for an adult first offender should be two years imprisonment."<sup>14</sup> The defendant is an adult repeated offender and this case has some aggravations, and it is my considered view that a starting point of more than two years is justified.
39. Hence, I am of the view that a starting point of 30 months (2 ½ years) imprisonment is reasonable for this present case.
40. From this point, I will now consider if there are some aggravating factors present. Firstly, I note that the offence was committed with the company of another accomplice. I add another 3 months for this. Secondly, the burglary involved the theft of personal items. These include the items enumerated in paragraph 6 above which includes iPhones, iPad, an Apple Mac Laptop, chargers, computer charger, iPhone chargers and a baby bag which are very expensive properties. I add another 3 months for this. Thirdly, I note that a weapon was used, and this is quite serious. The weapon was used to open the door.

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<sup>12</sup> *R v Meke* [2005] SBMC 7; GMC 215 of 2005 (25 October 2005)

<sup>13</sup> *R v Dani and Aidiana* [2004] SBCA 16; CA-CRAC 011 of 2004 (11 November 2004)

<sup>14</sup> *Regina v Bade* [1988] SPLawRp 12; [1988] SPLR 348 (21 December 1988)

Hence, I add another 3 months. I note that the offending here is premeditated and this is also an aggravation. Hence, I add another one month. Fourth, I note that the offence was committed at night and I add another 2 months. In summary, a total of 12 months is added to the starting point of 30 months and the result is 42 months.

41. On the other hand, I ought to consider the mitigating factors and give due allowance and discounts.
42. **Early guilty plea.** Mr Buga entered a guilty plea at an early stage. I deduct 6 months to reflect this.
43. **All Properties are recovered.** All the items were recovered but I note they were not voluntarily recovered or given back to the victim by the defendant. Nevertheless, I deduct 4 months to reflect this.
44. **Cooperation with Police.** The defendant co-operated with the Police during the interview and assisted the Police in their investigations. I deduct 2 months to reflect this.
45. **Pre-Sentence Custody.** This must be taken into account and whatever sentence that will be imposed should be backdated to when the defendant was first remanded.
46. I also remind myself of what his Lordship Palmer CJ said in the *Pitamama's case*<sup>15</sup> 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." Hence, after having considered all the relevant factors, I am satisfied that a sentence of 30 months, that is, 2 years and 6 months is appropriate for this present case.

## CONCLUSION

47. It is the duty of the courts to remind the general public that burglary and theft when committed basically breaches the fundamental property rights that are entrenched in our *Constitution*. Section 8 of the *Constitution* provides for the protection of deprivation of property.<sup>16</sup> Similarly, section 9 of the *Constitution* provides for the protection of privacy of home and other property.<sup>17</sup> So basically someone who commits the offence of burglary breaches the constitutional right of the victims or the property owners.
48. The Constitution was adopted more than forty years ago, but the intention of the framers of the Constitution still remains relevant today as far as the bill of rights contained therein are concerned. That is to ensure that the constitutional rights with respect to the protection of the people's homes and

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<sup>15</sup> *Pitamama v Regina* [2005] SBEIC 45; HCSI-CRC 003 of 2005 (11 March 2005)

<sup>16</sup> *Constitution 1978 (Solomon Islands)*, s8. "8.-(1) No property of any description shall be compulsorily taken possession of, and no interest or right over property of any description shall be compulsorily acquired, except where the following conditions are satisfied,.....

<sup>17</sup> *Constitution 1978 (Solomon Islands)*, s9. "9.-(1) Except with his own consent, no person shall be subjected to the search of his person or his property or the entry by others on his premises.

deprivation of property are well protected. Rights that are given constitutional recognition are very important rights and their breach should not be taken lightly.

49. Burglary is a felony as opposed to a misdemeanor. The offence of burglary always involves criminal trespass or breaking and entering into other people's home, associated with the mental conduct of having the intention to commit a felony especially larceny. In this case, the defendant broke and entered the house of Connor Carson, who is an expatriate from Australia, working as an advisor for the AFP, and presently working here under the Solomon Islands Police Development Program. The complainant is one of the expatriates who are here purposely to help our country and in particular the Royal Solomon Islands Police Force, and to provide technical advice to our local officers in terms of, *inter alia*, capacity development and other related areas. This is appalling and only negatively impacted our country's revamped reputation pertaining to law and order which was attributed to the work of the Regional Assistance Mission to Solomon Islands (RAMSI), after the dark years of social unrest from 1999 to 2003. This is simply not the way locals should treat foreigners and expatriates who left the comforts of their home countries to help ours which in itself is a sacrifice on their part.
50. Some of the driving forces and reasons behind the increase of such offences are arguably, *inter alia*, unemployment, poverty, greed, and the motivation to get money easily and speedily. As this court has echoed in similar cases in the past, the first school is at home, and parents are responsible to cultivate, develop and instill desirable behaviors in their children to ensure that they become useful and law abiding citizens in the future. As individuals and as adults, I think a person should do what is traditionally expected of a man for survival, work hard in order to earn money, and to be able to support himself, or to put food on the table, and the present offender is no exception. Hardships in life do not give someone the freedom to commit burglary and steal a property from another person.
51. For a 29 year old person to have approximately 15 previous convictions is startling and quite unusual. According to the Police records, his first conviction was for Common Nuisance and Simple Larceny when he was around 13 years old in 2003. After that he was convicted and sentenced for burglary for approximately more than ten times. Based on his previous convictions and also his present one, Mr Buga is a serial burglar and a menace to the public.
52. As conventionally accepted, when sentencing such people, the overriding consideration is the public protection and I take note of this when formulating my sentence.
53. After assessing and balancing the core principles of sentencing such as punishment, deterrence and rehabilitation, I am satisfied that a sentence of 2 and ½ years is appropriate for this present case and it reflects the severity of the offence committed and the defendant's culpability.
54. I therefore, I sentence Mr Billy Buga to 30 months (2 ½ years) imprisonment which ought to be backdated to the date that he was first remanded.

## ORDERS

55. The orders of the Court are as follows:

- 1] The offender Mr Billy Buga is sentenced to thirty months' (or 2 years and 6 months) imprisonment for one count of burglary contrary to section 299(a) of the *Penal Code* [Cap 26].
- 2] Time spent in custody shall be taken into account and the total sentence ought to be backdated to the date that the defendant was first remanded, that is, on the 14<sup>th</sup> July 2019.
- 3] The trial for the other matter in CC No. 791 of 2019, should proceed sometimes later this morning.
- 4] Right of Appeal within 14 days.

  
PRINCIPAL MAGISTRATE FELIX HOLLISON  
THE COURT