



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

(Criminal Jurisdiction)

Criminal Case No: 791 of 2019

**REGINA**

-V-

**BILLY BUGA**

Coram: HOLLISON F (PRINCIPAL MAGISTRATE)

*Appearances:*

Ms Hellen Sekivara Naqu, Senior Legal Officer, ODPP, for the Crown

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

*Date of Sentencing and Mitigation: 24<sup>th</sup> January 2020*

*Date of Ruling: 14 February 2020*

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

**SENTENCE**

**INTRODUCTION**

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] and was sentenced on the 20<sup>th</sup> January 2020 to a 2 ½ years’ imprisonment.<sup>1</sup> However, in CC No. 791 of 2019, Mr Buga initially pleaded not guilty to one count of Burglary contrary to section 299(a) of the *Penal Code* [Cap 26], and the matter was set for trial from the 20<sup>th</sup> to 24<sup>th</sup> January 2020.
2. On the 20<sup>th</sup> January 2020, Mr Buga came to court with a changed mind, and pleaded guilty to one count of Burglary contrary to section 299(a) of the *Penal Code* in CC No. 791 of 2019.

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<sup>1</sup> *Regina-v-Buga* [2020] SBMC: Criminal Case Number 540 of 2019 (20<sup>th</sup> January 2020).

3. 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. 791 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 Mr Hendry Kapu from Luepe Village, Santa Cruz, Temotu Province.

**FACTS**

6. On the 7<sup>th</sup> July 2019, between 1am and 3am, the accused broke the right glass panel of the door to the living room of the complainant's house and entered therein. The Complainant's house is located at Tavio Ridge, West Honiara, Guadalcanal Province.
7. The accused then stole the following properties from the victim:
  - 1) A Huawei mobile phone with SIM Card number 7655601, valued at SBD \$899;
  - 2) A DVD player valued at SBD 550; and
  - 3) A brown leather hat valued at SBD \$165.
8. The complainant reported the matter to the Central Police Station at around 9:30am that same day and a forensic officer went to the scene to investigate the matter.
9. The forensic officer attended and examined the burglary scene at Tavio Ridge, West Honiara. He found finger marks on the damaged glass door located at the north wall of the living room. He then labelled, photographed and collected the finger marks for further analysis.
10. When the finger marks were analyzed, by a finger print expert at the Forensic Services within the Royal Solomon Islands Police Force, the result showed that a finger labelled 163367 was identical with the right middle finger of Billy Buga, the accused.
11. The accused was arrested and the finger prints obtained during the arrest was also found to be identical with the fingerprint labelled 16337 which was collected at the crime scene.
12. The accused was arrested on the 15<sup>th</sup> July 2019 and remanded on the 16<sup>th</sup> July 2019.
13. The stolen items were never recovered.

## DISCUSSION AND ANALYSIS

14. In sentencing, the classic principles of sentencing such as punishment, retribution, deterrence and rehabilitation must be taken into account.
15. Moreover, the sentence that will be issued must always be proportionate with the severity of the offence.
16. Each case must be decided based on its own merits, facts and circumstances.

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

17. Section 299(a) of the *Penal Code* [Cap 26]<sup>2</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.

18. 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

19. The aggravating factors are as follows:

##### **[1] Maximum Sentence**

20. The maximum sentence for burglary contrary to section 299(a) of the *Penal Code* [Cap 26] is life imprisonment which is a very serious offence.

##### **[2] Defendant's prior convictions.**

21. The defendant has a number of previous convictions since 2003 for very similar offences, the most common being that of burglary. Despite the fact that he had been sent to prison for numerous times, Mr. Buga had not learned his lesson, and committed more or less the same offence as soon as he was released. To him, stealing is a means to acquire valuable properties, however, without realizing that every time he steals, he deprives the owner permanently with the property. As noted, I have recently sentenced him on the 20<sup>th</sup> January 2020 to a 2 and ½ years imprisonment for one count of Burglary contrary to section 299(a) of the *Penal Code* [Cap 26].<sup>3</sup>

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<sup>2</sup> *Penal Code* [Cap 26], s 299(a)

<sup>3</sup> *Regina-v-Buga* [2020] SBMC: Criminal Case Number 540 of 2019 (20<sup>th</sup> January 2020).

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

**[3] The offence was committed at night.**

23. Similar to his recent case in CC No. 540 of 2019<sup>5</sup>, the offence was committed in the odd hours, around 1am and 3am. The accused broke and entered the complainant's house whilst he and his family were sleeping. People should be free to enjoy the comforts of their homes without invasion and disturbance either in the night or day, and to maintain ownership and possessions of their properties. Mr Kwalai argued that this is not an aggravation because it formed part of the elements of the offence of burglary which is technically correct. However, it is the manner in which the offence was carried out, and the fact that the victim and his family members were asleep in the night, actually aggravates the case. In other words, the victim including his immediate family were helpless at the time of offending.
24. In *Regina v Funifaka* [1997] SBHC 31; HC-CRC 033 of 1996 (6 June 1997)<sup>6</sup>, Palmer J (as he then was) stated at page 16-17 as follows:

*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.*

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

<sup>5</sup> *Regina v Buga* [2020] SBMC: Criminal Case Number 540 of 2019 (20<sup>th</sup> January 2020).

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

**[4] Seriousness of the Crime.**

25. In committing the offence of Burglary, the accused breached some of the fundamental rights such as the rights to protection from deprivation of property and protection for privacy of home and other property provided by sections 8 and 9 of the *Constitution of Solomon Islands 1978*.<sup>7</sup>

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

26. The manner in which the offence was carried out shows some degree of premeditation on the part of the accused. It was committed at night which ensured that the owners and occupants of the house were asleep. In fact, he broke the right glass panel of the door to the living room of the complainant's house, and it enabled him to commit the said offence.

**[6] All items were never recovered.**

27. The accused caused loss of property to the complainant and permanently deprived him from the use and enjoyment of his personal properties. The total value of the properties stolen here is \$1614.

**Mitigating Features**

28. The mitigating factors as follows:

**[1] Guilty plea.**

29. Mr Buga entered a guilty plea. This shows that he is remorseful and accept full responsibility for what he did wrong. I note that the plea was not made earlier at the first available opportunity. The accused entered the guilty plea just at the eleventh hour when the trial proper was about to commence on the 20<sup>th</sup> January 2020. I agree with Mr Kwalai that the plea although entered quite late but saves the court's time and resources, in having to conduct a complete trial.

30. In *Pitamama v Regina* [2005] SBHC 45; HCSI-CRC 003 of 2005 (11 March 2005)<sup>8</sup>, the High Court said:

*"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*

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<sup>7</sup> Constitution of Solomon Islands 1978, ss 8 and 9

<sup>8</sup> *Pitamama v Regina* [2005] SBHC 45; HCSI-CRC 003 of 2005 (11 March 2005)

*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.*

### Sentencing Tariffs for the offence of Burglary

31. In *Regina v Bade* [1988] SPLawRp 12; [1988] SPLR 348 (21 December 1988)<sup>9</sup>, 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, 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.*

32. In *Pitamama – v- Regina* [2005]<sup>10</sup>, 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.*

<sup>9</sup> *Regina v Bade* [1988] SPLawRp 12; [1988] SPLR 348 (21 December 1988)

<sup>10</sup> *Pitamama v Regina* [2005] SBHC 45; HCSI-CRC 003 of 2005 (11 March 2005).

33. In *Regina v Tonto* [2017] SBMC 60; Criminal Case 1220 of 2017 (12 December 2017),<sup>11</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.
34. In *Regina v Waiti* [2016] SBMC 17; Criminal Case 1534 of 2015 (6 July 2016)<sup>12</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.
35. In *R v Meke* [2005] SBMC 7; GMC 215 of 2005 (25 October 2005)<sup>13</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.
36. In *R v Dani and Aidiana* [2004] SBCA 16; CA-CRAC 011 of 2004 (11 November 2004)<sup>14</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. However, the appeal was allowed, and the following amended sentences were imposed by the Court of Appeal:
- 1) 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) The Appellants Seni Figuomea and Wilson Iro (aka Fred Fate), for the offence of burglary contrary to section 229(a) of the *Penal Code*[Cap 26]-4 years imprisonment
  - 3) 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**

37. In the *Pitamama's case*<sup>15</sup> his Lordship Palmer CJ cautioned 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

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<sup>11</sup> *Regina v Tonto* [2017] SBMC 60; Criminal Case 1220 of 2017 (12 December 2017)

<sup>12</sup> *Regina v Waiti* [2016] SBMC 17; Criminal Case 1534 of 2015 (6 July 2016)

<sup>13</sup> *R v Meke* [2005] SBMC 7; GMC 215 of 2005 (25 October 2005)

<sup>14</sup> *R v Dani and Aidiana* [2004] SBCA 16; CA-CRAC 011 of 2004 (11 November 2004)

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

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.” I take note of his Lordship CJ Palmer’s comments.

38. Based in the *Regina v Bade* [1988]<sup>16</sup>, and other case authorities in this jurisdiction, an immediate custodial sentence is inevitable. I take into consideration the comments of Ward CJ in the *Bade’s case* where his Lordship 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>17</sup> Hence, I am of the view that a starting point of 24 months (2 years) imprisonment is reasonable for this present case.
39. From this point, I will now consider if there are some aggravating factors present. In *Regina v Bade* [1988] SPLawRp 12; [1988] SPLR 348 (21 December 1988)<sup>18</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...”. Firstly, I note that the offence was premeditated and it involves the breaking of the right glass panel of the door to the living room of the complainant’s house, thus, it enabled him to commit the said offence. I add 3 months to reflect this aggravating feature. Secondly, the burglary involved the theft of personal items which include a mobile phone, a DVD player and a hat that were never recovered.<sup>19</sup> I add another 3 months to reflect this aggravation. In summary, a total of 6 months is added to the starting point of 24 months. Hence, the result would be 30 months.
40. On the other hand, I ought to consider the mitigating factors and give due allowance.
41. *Early guilty plea.* Mr Buga entered a guilty plea shortly before the commencement of the trial on the 20<sup>th</sup> January 2019. I deduct 6 months to reflect this along with his personal circumstances and other relevant factors. This would effectively give a resulting sentence of 24 months or 2 years imprisonment.
42. *Pre-Sentence Custody.* Mr Kwalai of counsel for the defendant urged the court to backdate the sentence to the 14<sup>th</sup> July 2019 that is the date that he was first remanded, however, the sentence in CC No. 540 of 2019, was retrospectively commenced on the 14<sup>th</sup> July 2019. Moreover, this present case arose from a different transaction, and cannot be served concurrently with the sentence in CC No. 540 of 2019. Hence, the sentence in this case will run consequent to the one in CC No. 540 of 2019.

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<sup>16</sup> *Regina v Bade* [1988] SPLawRp 12; [1988] SPLR 348 (21 December 1988)

<sup>17</sup> *Regina v Bade* [1988] SPLawRp 12; [1988] SPLR 348 (21 December 1988)

<sup>18</sup> In *Regina v Bade* [1988] SPLawRp 12; [1988] SPLR 348 (21 December 1988)

<sup>19</sup> Refer to the facts.

## CONCLUSION

43. Section 8 of the *Constitution* provides for the protection of deprivation of property.<sup>20</sup> Similarly, section 9 of the *Constitution* provides for the protection of privacy of home and other property.<sup>21</sup> These constitutional rights must always be protected, and it is the role of the court's to make it clear how important these rights are by delivering proper and appropriate sentences which reflects the severity of such offences. The courts have reminded the public about these fundamental and constitutional rights with respect to property rights time and again, and I cannot stress this enough.
44. I note that July the 7<sup>th</sup> is supposed to be a day for celebrations for all Solomon Islanders, however, it is a day that the victim would never easily forget, not because of the independence anniversary celebrations but because his properties were stolen in his very own home whilst he was asleep.<sup>22</sup> It might have haunted the victim given the fact that something even worse and sinister could have happened that night to him and his family.
45. It is appalling to note that a 29 year old person, who is the present defendant, has approximately 15 previous convictions. According to the Police records, his first conviction was for Common Nuisance and Simple Larceny in 2003 which means he was around 13 at the time. Despite being convicted and sentenced for Burglary for more than ten times, it appears that he never learned from those past convictions. Mr Buga is a career burglar and as I have said in his previous case he "... is a serial burglar and a menace to the public".<sup>23</sup> When sentencing persistent offenders such the defendant, the overriding consideration is the public protection and I am mindful to ensure that the sentence that will be imposed is one that is not inappropriate for the offence committed.
46. After assessing and balancing the core principles of sentencing such as punishment, deterrence and rehabilitation, I am satisfied that a sentence of 2 years imprisonment is appropriate and it reflects the magnitude of the offence committed.
47. I therefore, I sentence Mr Billy Buga to 24 months (2 years) imprisonment which shall run consequently with the sentence in CC No. 540 of 2019 which he is currently serving. This means he will serve the sentence in the present case, after having served the one issued in relation to CC No. 540 of 2019.
48. It is my hope that Mr Buga will finally realize his mistake and transform his life for the better after serving his sentences, and I think it is pertinent to say that it is never too late to change.

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<sup>20</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>21</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.

<sup>22</sup> 7<sup>th</sup> July 2019, is the 41<sup>st</sup> Independence Anniversary of Solomon Islands since gaining her statehood in 1978 from Great Britain.

<sup>23</sup> *Regina-v-Buga* [2020] SBMC: Criminal Case Number 540 of 2019 (20<sup>th</sup> January 2020).

## ORDERS

49. The orders of the Court are as follows:

- 1] The offender Mr Billy Buga is sentenced to 24 months (2 years) imprisonment for one count of burglary contrary to section 299(a) of the *Penal Code* [Cap 26].
- 2] This sentence shall run consequentially with the sentence in CC No. 540 of 2019 which he is presently serving. This means he needs to serve the imprisonment term in CC No. 540 of 2019 first, and then he will serve the sentence in the present case subsequently.
- 3] Right of Appeal within 14 days.



**PRINCIPAL MAGISTRATE FELIX HOLLISON**  
**THE COURT**