



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

[Criminal Jurisdiction]

Criminal Case No. 1075/2019

**REGINA**

Complainant

-V-

**WALE OFE KALISTO JUNIOR**

Defendant

*Before: Clifton M. Ruele-Principal Magistrate  
Mr Paul None for the Defendant  
Mr Steward K. Tonowane for the Crown*

*Date of sentencing hearing: 19<sup>th</sup> February 2020  
Date of sentence: 26<sup>th</sup> February 2020*

**SENTENCE**

**Introduction:**

1. The Defendant Mr Wale Ofe Kalisto Wale pleaded guilty to a charge of Simple Larceny contrary to section 261(i) of the *Penal Code* [Cap 26].<sup>1</sup>

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<sup>1</sup> Refer to the charge filed with the court on 13<sup>th</sup> January 2020

**Agreed facts:**

2. The Defendant Mr Wale Ofe Kalisto Wale is a native of Oibola village, Langa Langa Lagoon, Malaita province
3. The Complainant is Raye Sokeni a native of Mage village, Malaita province.
4. On 14<sup>th</sup> December 2019 at around 1:00am, the defendant did stole a mobile phone, Haus Brand, black in colour from the Complainant. The value of the mobile phone was SBDS299.00.
5. The defendant grabbed the mobile from the Complainant in front of the King Solomon hotel area and escaped. The defendant ran to the Telekom area and then turned and ran towards the Museum area. Fortunately, duty police officers at the Central Police Station manage to capture and arrested the defendant at the Museum area.
6. At the time of the arrest, the mobile phone was no longer in the possession of the Defendant.

**Max Penalty:**

7. The 5 years imprisonment for the offence of simple larceny only reflects the seriousness of the offence and the intention of our legislators to deject such offending within our society.
8. However, the maximum penalty is reserved for the worst offending and each case that come before the courts should be assess individually according to its own merits and facts.

**Aggravating factors:**

9. From the agreed facts, I find the following aggravating factors ;
  - (i) **Property was never recovered** – though you did not benefit from the proceeds of your crime, obviously what you did caused the Complainant financial lose given the value of the property.
  - (ii) **Offence occurred at night**- the fact that the offending occurred at night makes it serious. You took advantage of the dark and execute the offence, at the back of your mind you thought that you won't be recognised and or caught.
  - (iii) **The offending involved pre-planning or is premeditated** –the fact that you grabbed the mobile from the Complainant and escaped clearly indicate some thoughts to carry out this offending. I do not accept that it is an optimistic one.

### Mitigating factors:

10. I consider the following mitigating factors in your case;
- (i) **Guilty plea & Remorse** – You entered an early guilty plea to the charge against you. Clearly it shows that you have own up to your wrongs and accept the consequences of your actions. More so, your guilty plea shows remorse on your part and undeniably saves court's time and resources of running a full trial.
  - (ii) **First-time offender and a person of previous good character**– You're a first time offender with no prior criminal records. You have been a person of good character for the past 22 years and have engaged yourself voluntarily in community services.
  - (iii) **Co – operation with police**- I noted that you co-operated well with the police, and admitted to them your wrongs at the first opportunity during your arrest.

### Sentencing Tariffs:

11. In the case of *Regina v Rikiloni*<sup>2</sup>, the court stated that past cases can only be used as a guide in determining the appropriate sentence. This Court is empowered to utilise the maxim penalty provided by the legislation and can impose sentence that is fair and reasonable in light of the circumstance of each case. Hence, looking at previous case, the sentence for the offence of simple larceny ranges from suspended sentence to imprisonment terms,<sup>3</sup> depending on the individual nature, and circumstances of each case.

### Sentencing Remarks:

12. The offence of simple larceny is one of the common offences in this country and the courts have been imposing penalties with confidence that it will serves both specific and general deterrence, retribution, prevention and rehabilitation. Despite the application of these sentencing principles, criminal offences such as simple larceny keeps coming before the courts and the courts will continue to impose and apply the sentencing principles on a case by case merit with the goal of ensuring the

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<sup>2</sup> Regina v Rikiloni [2015] SBMC 2; Criminal Case 674.2014 (22 April 2015)

<sup>3</sup> Regina v Teleu[2017] SBMC 17;CMC-CRC-388 OF 2017 (6 JUNE 2017)- the court imposed a suspended sentence for stealing of \$850.00. Regina v Columbus [2017] SBHC 119;HCSI-CAC O6 of 2017 (25<sup>th</sup> September 2017)-The court squash the 4 years and replace it with 9 months imprisonment- defendant stole a mobile phone- worth \$8,880.00.

adherence of the rule of law so as to ensure that peace, harmony and order is maintained in the society.

13. More so, gleaning on your previous good character within the community, I must strongly encourage you to learn from the sentence I will impose on you as a lesson and turning point in your life. You must learn from this case and never to embark your life in such criminal activities. You are a young person, you still have a huge life ahead of you. I encourage you to look deep within yourself and identify your potentials. I am confident there is more good things in life for you still yet to be explored than engaging in criminal activities. You must choose wisely the path you are to embark your life on from today and onwards. Also be an advocate in your community, tell other youths and the community as a whole that engaging in criminal activities will do no one any good but only to destroy one's life and future.

#### **Sentencing principles:**

14. In deciding the appropriate penalty for this case, am reminded of the sentiments in *R v Ball* (1951) 35 CrAppR 164 Hilbery J, delivering the judgment of the Court of Criminal Appeal, commented at pages 165 - 166:

*'In deciding the appropriate sentence a Court should always be guided by certain considerations. The first and foremost is the public interest. The criminal law is publicly enforced, not only with the object of punishing crime, but also in the hope of preventing it. A proper sentence, passed in public, serves the public interest in two ways. It may deter others who might be tempted to try crime as seeming to offer easy money on the supposition, that if the offender is caught and brought to justice, the punishment will be negligible. Such a sentence may also deter the particular criminal from committing a crime again, or induce him to turn from a criminal to an honest life. The public interest is indeed served, and best served, if the offender is induced to turn from criminal ways to honest living' as referred to in *Anna Langley v R* (supra).'*

15. More so, in *R v Rex Topilu* (Unrep. Criminal Case No. 35 of 1995) Palmer J (as he then was) stated at page 2:

*'One of the primary goals in sentencing is to look beyond the element of punishment, to setting the accused on the right path when he/she comes out of prison (rehabilitate and reform). There are basically two types of punishment system in this jurisdiction; fines or imprisonment. Both do not necessarily guarantee that a person will change or be reformed once he completes his sentence or punishment.'*

**Starting point:**

16. Having considered the facts of the case, the nature and circumstance of the offending herein, the sentencing principles and the range of sentences passed in respect of previous similar cases, I see that the sentence I impose on you must reflect both specific and general deterrence and as such the starting point in your case is 10 months imprisonment.

**Sentencing consideration:**

17. I hereby reduce 3 months for your early guilty plea  
18. I further reduce 2 months to consider the fact that you are a person of previous good character and a first-time offender.  
19. I further reduce 1 months to reflect your family circumstance and other mitigating factors. The resulting sentence is therefore, 4 months imprisonment.

**Sentencing Order:**

20. I hereby sentence you Mr Wale Ofe Kaisto to **4 months' imprisonment.**  
21. Time spent in custody or any pre-detention period must be deducted from this head sentence.  
22. 14 days right of appeal applies.  
23. Order accordingly.

  
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**MR. CLIFTON M. RUELE**  
Principal Magistrate