



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

(Criminal Jurisdiction)

Criminal Case No: 157 of 2019

REGINA

-V-

JAMES ATA

Coram: HOLLISON F (PRINCIPAL MAGISTRATE)

Appearances:

Mr Wesley Zoze, Senior Legal Officer, ODPP, for the Crown

Mr Lazarus Waroka, Senior Legal Officer, PSO, for the Defendant

Date of Sentencing and Mitigation: 17th February 2020

Date of Ruling: 5th March 2020

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

SENTENCE

INTRODUCTION

1. The defendant Mr James Ata was charged with one count of Robbery contrary to section 293(1)(a) of the *Penal Code* [Cap 26], and one count of Possession of weapon contrary to section 84(2) of the *Penal Code* [Cap 26].
2. Mr Ata pleaded guilty to both counts after a plea negotiation with the Director of Public Prosecution on the 28th of November 2019.
3. I now pronounce his conviction for both charges based on the pleas entered.

Basic background of the defendant and the Complainant

4. The defendant Mr James Ata is a native of Fataolo Village, Malaita Province.

5. The victim is Mr Tojobor Rahman Kaium, a Bangladesh national and a business person and investor in the country.

FACTS

6. The incident occurred at the Capital Park building, East Honiara, Guadalcanal Province.
7. On the 22nd December 2018, at around 7am and 8am, the prisoner with two other persons being drunk walked from the Burns Creek area towards the Capital Park Building. They carried a bag that contained a shotgun. They then entered the Noor and Sons shop located at the Capital Park building. At all the material times, the complainant and his three other employees were in the shop.
8. Whilst they were inside the shop one of the suspects walked over to the complainant who was the cashier at the time and pointed the gun at him and demanded him money. Whilst the person holding the gun was demanding money, the Prisoner Mr Ata proceeded to the cashier and took all the money therein and put them into an empty box.
9. The third person was standing at the door of the shop to observe what was going on outside especially the movement of people.
10. After the prisoner took the money, he and the other two persons, walked out from the Capital Park building through the eastern gate and quickly escaped into the Burns Creek area.
11. The amount taken from the shop keeper was about SBD 10,000 and it includes the shop's takings from the previous day.
12. The prisoner evaded the Police for sometimes until he was arrested on the 23rd of February 2019 at the Ranadi Dump site area in East Honiara and he was conveyed to the Naha Police station. During that time inside the Naha CID office, police found in his possession behind the back of his trousers, a kitchen knife with silver blade and a white and black handle which was about 12 centimeters long.
13. The accused was charged with one count of Armed Robbery contrary to section 293(1)(a) of the *Penal Code* [Cap 26] and one count of Possession of weapon contrary to section 84(2) of the *Penal Code* [Cap 26].

COUNT 1: ARMED ROBBERY CONTRARY TO SECTION 293(1) AND SECTION 21(a) OF THE PENAL CODE [CAP 26]

14. Section 293(1)(a) of the *Penal Code* [Cap 26]¹ provides as follows:

293.-(1) Any person who -

¹ *Penal Code* [Cap 26], s 293(1)

(a) being armed with any offensive weapon or instrument, or being together with one other person or more, robs, or assaults with intent to rob, any person; or

is guilty of a felony, and shall be liable to imprisonment for life.

15. The offence of armed robbery carries a life imprisonment which shows that it is one of the most serious offences prescribed by the *Penal Code* [Cap 26].

16. Professor Eric Colvin expounds and explains the offence of Robbery as follows:

The offence of robbery involves stealing coupled with the use or threat of violence, immediately beforehand or afterwards, in order to steal the property or to prevent or overcome resistance to its being stolen. Codes s 409(QLD)/s 392(WA). Each element has an intentional aspect. The first is an intention to permanently deprive the owner of the property; this is required for stealing. The second is the use of violence in order to steal or to prevent or overcome resistance. The phrase 'in order' suggests a purposive requirement. Presumably the incidental use of violence would not constitute robbery. The violence be against the victim but it can be directed to any person or even to property.²

17. There is no issue as to the elements of the offence of robbery which were proved based on the guilty plea of the defendant. However, it is important to note that the use or threat of violence and most notably the use of a gun which enabled the commission of the robbery on 22nd December 2018 against the innocent victim is very serious. I will deliberate more on this in the paragraphs below.

Aggravating features

18. The aggravating factors in this case are as follows:

19. **Seriousness of the offence.** The maximum penalty of life imprisonment shows that the offence of robbery is a very serious offence.

20. **Premeditation.** The nature of the offending and how it was carried out shows that the prisoner and his two other cohorts planned the robbery prior to implementing it. The fact that they were in possession of a lethal weapon which is a gun confirms their intention and premeditation to rob the victims. The use of a gun to intimidate and threaten would certainly be effective in causing fear to the victims.

21. **Offence committed with the company of others.** The offence was committed together with the company of other persons. The present offending was committed together with at least two other persons. When an offence is committed by a group of persons acting together which is also known as gang robbery it is an aggravation. The presence of a group of robbers would almost certainly terrify anyone.

22. **Level of Culpability.** The prisoner was the person who actually grabbed the money from the cashier and put the money in the box. Hence, he played a major role in the commission of the offence.

² Eric Colvin et al "Criminal Law in Queensland and Western Australia: Cases and Commentary": Ch. 7 Property Offences (6th Edition, 2012) 2019.

23. **It was carried out with violence/weapons used.** The use of a gun or firearm in the commission of the offending aggravated the offending. The defendants also exerted violence and forcefully demanded the complainants before taking the money.
24. **Financial Loss to the complainants.** The complainant is a business person who owns and runs a shop. The actions of the prisoner and his other fellow assailants had caused financial loss to the owner of the stolen money. An amount of SBD 10,000 was removed from the shop which was the takings of the day and the day before. The money was never recovered and a loss to the business firm and the owner.
25. **Psychological and mental effect on the victims.** Victims of armed robbery normally would suffer and experience psychological and mental effects because of the fear that they were subjected to in the course of committing the crime. In this case, a gun was pointed to the victims. There is no doubt that the victims were terrified and traumatized by this robbery. In *R v Henry Barber Tran Silver Tsoukatos Kyroglou Jenkins* [1999] NSWCCA 111 (12 May 1999)³, the Supreme Court of New South Wales-Court of Appeal, as per Hume J, stated as follows:

324. In many cases the fear will be of imminent death with the concomitant loss of all that life holds and everything the victim holds dear. Experience of life and experience within the courts demonstrates that not all persons readily recover from such traumatic events. In other cases the fear may not be extreme and in not all cases will it continue to have an impact or significant impact on the victim after the threat causing it is removed. Not all people react to circumstances of stress in the same way. However, as I indicated above when referring to R v Broxam, R v Bell, and R v Stefanovski, the potential devastating psychological damage consequent on armed robberies is something of which the Courts have taken judicial notice over many years.

26. **Intoxication/drunk at the time of the offending.** The accused with the other two persons were obviously intoxicated at the time of the offending. When a drunken person threatens you with a gun, it would certainly be terrifying and nerve-racking because an intoxicated person is not in his or her normal state of mind to make a proper judgment compared to someone who is not drunk.

Mitigating Features

27. The mitigating factors are as follows:
28. **Early guilty plea.** He entered an early guilty plea to one count of armed robbery contrary to section 293(1)(a). This also saves the courts time and resources to run a trial.
29. **First time offender.** The defendant is a first-time offender until his conviction in this present case. This means that he was a law abiding citizen prior to the offending in this present case.

³ In *R v Henry Barber Tran Silver Tsoukatos Kyroglou Jenkins* [1999] NSWCCA 111 (12 May 1999)

30. *Youthfulness and Prospects of Rehabilitation.* He has a high chance of rehabilitation because he is only 22 years of age.
31. *Cooperation with the Police.* Mr Waroka of counsel for the defendant submitted that the defendant cooperated well with the Police and should be given a due allowance for this. However, I am not persuaded in this argument given the fact that the defendant evaded police for sometimes before being arrested in February 2019.⁴ Hence, the defendant will not be given an allowance for cooperating with the police because he evaded police and failed to cooperate with the Police since December 2018 until his arrest in February 2019.
32. *Time spent in custody.* The defendant was remanded in custody since the 23rd February 2019. This ought to be taken into account, and an appropriate deduction or retrospective commencement order with respect to the defendant should be given.
33. His personal circumstances are as follows:
- 1) He works as a carpenter and his level of education is class 1.

Comparative Sentences

34. The offence of armed robbery is a very serious crime and this is reflected in the maximum penalty of life imprisonment.⁵
35. *In Selo v Regina* [2017] SBCA 17; SICOA-CRAC 9003 of 2017 (13 October 2017)⁶, the Court of Appeal imposed a sentence of 14 years of imprisonment for a count of armed robbery contrary to section 293 of the *Penal Code*, and 10 years of imprisonment for a count of grievous bodily harm which were ordered to be served concurrently. The armed robbery in this case involved the robbing of around SBD 4 million dollars in the vicinity of the Westpac Bank at Point Cruz in Honiara. In the course of committing the offence, Mr Selo also caused grievous bodily harm to one of the security guards Mr Michael Malea by viciously cutting him using a knife that completely amputated his left hand leaving only the thumb. The robbers then used a vehicle and escaped with the boxes of money. The arraignment was done in the Magistrates Court and was committed to the High Court for sentencing, and an 8 years imprisonment term was imposed. However, it was further increased to 14 years by the Court of Appeal upon appeal in consideration of the severity of the robbery which was done in broad daylight and within one of the commercial banks in the Central Business District in Honiara. Their Lordships commented as follows:

This is a most serious case of armed robbery of a commercial bank during normal business hours. It was premeditated and involved weapons which, it is clear, this gang were prepared to use. The appellant and his companion consciously planned a robbery in Mendana Avenue in the heart of the Honiara commercial district. They did so at a time when they must have been well aware a

⁴ Refer to the Agreed Facts

⁵ *Penal Code* [Cap 26], s 293(1).

⁶ *Selo v Regina* [2017] SBCA 17; SICOA-CRAC 9003 of 2017 (13 October 2017).

large number of innocent bystanders going about their lawful business would be present. They must have also been aware that their actions could prove dangerous to those bystanders. A very large sum of money was involved.

36. In *Regina v Suilamo (Judgment)* [1992] SBHC 58; HCSI-CRC 3 of 1992 (5 May 1992)⁷, the High Court imposed a sentence of 4 years imprisonment for Mr Maritino Suilamo and Mr Tome Akwasu'u respectively, and a sentence of 3 years imprisonment for Mr Molousafi after they all pleaded guilty to the charge of robbery. One of the victims of the robbery also died as a result of the robbery. Hence, the three defendants were sentenced also for manslaughter ranging from 10 years and 7 years imprisonment respectively which were ordered to be served concurrently with the sentences for the offence of robbery.
37. In *Regina-v-Suba* [2016] SBMC 21; Criminal Case No. 1154 of 2015⁸, the defendant was sentenced to 3 years imprisonment. Mr Jonis Suba pleaded guilty to one count of armed robbery contrary to section 293(1) (a) of the *Penal Code* [Cap 26]. The offending occurred in the early hours on the 1st of August 2015. The defendants were armed with bush knives and covered their faces with masks and entered the Winlex Company's compound at Lunga in East Honiara. The defendants stole SBD 130, 336.70 cash, a 070 chainsaw and other personal properties from the said company. The defendant only took SBD 800 and a laptop from the total amount of cash and the properties stolen that night. Those items were never recovered.
38. In *Regina v Saeni* [2017] SBMC 1; Criminal Case 1143 of 2015 (18 April 2017)⁹, the court sentenced the defendant to a term of 26 months of imprisonment after he pleaded guilty to one count of robbery contrary to the provisions of the *Penal Code* [Cap 26]. The offending occurred on the 25th July 2015, when the accused with his five friends were drinking liquor beside a logging road that leads up to NAC area in the Guadalcanal Province. The defendants asked one of the truck drivers of a logging company, an Asian, to drop them off at their destination but the driver refused. The victim was ejected from the truck compellingly. One of the defendants then drove the vehicle and abandoned it somewhere beside the Tina River in the Guadalcanal plains. Parts of the vehicle were also damaged.
39. In *Regina v Kaluae* [2016] SBMC 19; Criminal Case 1492 of 2015 (25 July 2016)¹⁰; the defendant was sentenced to 2 years imprisonment after he pleaded guilty to one count of robbery contrary to section 293 (1)(a) of the *Penal Code*, and one count of assault causing actual bodily harm contrary to section 245 of the *Penal Code* [Cap 26]. The defendant and his associates were armed with a bush knife as well. The defendant pleaded guilty to the two charges that were laid against him.
40. Based on the case authorities from this court, the High Court and the Court of Appeal, the sentencing tariff for armed robbery ranges from a custodial sentence of less than a year up to around 15 years.
41. As stated already, the severity and nature of each offence determines the sentence that the court will issue.

⁷ *Regina v Suilamo (Judgment)* [1992] SBHC 58; HCSI-CRC 3 of 1992 (5 May 1992)

⁸ *Regina v Suba* [2016] SBMC 21; Criminal Case 1154 of 2015 (4 August 2016)

⁹ *Regina v Saeni* [2017] SBMC 1; Criminal Case 1143 of 2015 (18 April 2017)

¹⁰ *Regina v Kaluae* [2016] SBMC 19; Criminal Case 1492 of 2015 (25 July 2016)

42. The nature of the present robbery case is a serious one because a lethal weapon, a gun was used and the presence of three people also caused fear and intimidation to the victims. It was also done within a public setting which no doubt had caused fear and confusion to the people who witnessed the incident. This clearly shows that it was premeditated and well planned. This present case is not as serious as the *Selo's case*, however, both cases shared some similarities in terms of their planning, money was stolen and the use of weapon.

Starting Point

43. In *R v Henry Barber Tran Silver Tsoukatos Kyroglou Jenkins* [1999] NSWCCA 111 (12 May 1999)¹¹, the Supreme Court of New South Wales-Court of Criminal Appeal stated that the use of firearms would attract a higher sentence compared to other weapons such as knife, and the court stated as follows:

139. The Court also identified a list of aggravating and mitigating factors, noted that use of firearms would require more severe sentences, and affirmed the discretion of the sentencing judge to take into account subjective circumstances. The nature of the guidance provided by the appellate court was to:

"... indicate the level of sentence for armed robbery with which we would not interfere.

44. In *Selo v Regina* [2017] SBCA 17; SICOA-CRAC 9003 of 2017 (13 October 2017)¹², their Lordships stated:

In imposing sentence, the first step is to arrive at an appropriate starting point for each of the offences the appellant pleaded guilty to. This was a task not undertaken by the learned Judge. The next step, again not undertaken by the sentencing Judge, is to consider the aggravating factors to reach an initial starting point. That must be considered against the well-established totality principle before mitigating factors are factored in.

45. After having considered the relevant factors and especially the aggravating features in this present case, it is my considered view that a starting point of 5 years (or 60 months) is appropriate for this present case.

46. *Early guilty plea.* He entered a guilty plea to one count of armed robbery contrary to section 293(1) (a) of the *Penal Code* [Cap.26]. In *Qoloni v Regina* [2005] SBHC 73; HCSI-CRC 076 of 2005 (21 June 2005)¹³, CJ Palmer quoted the passage in *R. v. Thompson* (2000) 49 NSWLR 383; 115 A Crim R 104 (CCA - a full bench) per Spigelman CJ, as follows:

(iii) The utilitarian value of a plea to the criminal justice system should generally be assessed in the range of 10-25 percent discount on sentence. The primary consideration determining where in the range a particular case should fall is the timing of the plea. What is to be regarded as an early plea

¹¹ In *R v Henry Barber Tran Silver Tsoukatos Kyroglou Jenkins* [1999] NSWCCA 111 (12 May 1999)

¹² *Selo v Regina* [2017] SBCA 17; SICOA-CRAC 9003 of 2017 (13 October 2017).

¹³ *Qoloni v Regina* [2005] SBHC 73; HCSI-CRC 076 of 2005 (21 June 2005)

will vary according to the circumstances of the case and is a matter for determination by the sentencing judge.

47. I note that he only entered a guilty plea after a plea deal with the DPP which resulted in the withdrawal of a charge under the *Firearms and Ammunition Act* [Cap 80], that was around October 2019. It took him almost 8 months since he was remanded to enter his plea of guilty to the offence. Hence, the delay in this case is also attributed to the defendant and his counsel as well. Hence, I deduct 8 months which is still within the range in *Qoloni-v-Regina* taking into consideration the timing of the plea.
48. **First time offender.** The defendant is a first-time offender until his conviction in this present case. I deduct 2 months for his previous good character.
49. **Youthfulness and Prospects of Rehabilitation, and his personal circumstances.** He is 22 years old has a high chance of rehabilitation because he is still relatively young. I deduct 2 months to reflect this including his other personal circumstances.
50. Hence, I am satisfied that an imprisonment of 48 months (4 years) is appropriate with respect to the severity of the offending.

COUNT 2: POSSESSION OF WEAPON

51. Section 84(2) of the *Penal Code* [Cap 84]¹⁴ provides as follows:

(2) Any person who, in a restricted area or place, without reasonable excuse the proof of which shall be on him, carries or has in his possession or under his control any weapon is guilty of a misdemeanour.

52. Section 41 of the *Penal Code* [Cap 26]¹⁵ provides as follows:

41. When in this Code no punishment is specially provided for any misdemeanour, it shall be punishable with imprisonment for a term not exceeding two years or with a fine or with both.

53. The maximum sentence for an offence under section 84(2) is provided for under section 41 of the *Penal Code* [Cap 26] and it is 2 years maximum sentence or with a fine or both.
54. **Seriousness of the offence.** The maximum penalty of 2 years imprisonment or a fine is an indication that the possession of the weapon is a serious offending.
55. One of the aggravating features is that the weapon, that is, a knife has the potential to inflict harm and even fatality. It was found when he was at the Police Custody at Naha Police Station in East Honiara. A police station is definitely not a permitted area for a civilian to possess a weapon and which is also a breach of the security protocols as far as the Police Force is concerned.

¹⁴ Section 84(2) of the *Penal Code* [Cap 84]

¹⁵ *Penal Code* [Cap 26], s 41.

Starting Point

56. After having considered the aggravating features and the circumstances of this case, I am the opinion that a starting point of 6 months is appropriate for this charge.
57. *Early guilty plea.* Mr Ata entered a guilty plea and this saves the courts time and resources. I deduct 2 months and 3 weeks for the early plea.
58. *First time offender.* The defendant is a first-time offender until his conviction in this present case. I deduct 2 month for his previous good character.
59. *Youthfulness and Prospects of Rehabilitation.* He has a high chance of rehabilitation because he is still relatively young. I deduct 1 month.
60. *Pre-Sentence Custody.* This shall be taken into account as well.
61. Hence, for the offence of unlawful possession of weapon, I am satisfied that 7 days imprisonment is relevant for the one count of in possession of a weapon contrary to section 84(2) of the *Penal Code* [Cap 26].

CONCLUSION

62. Robbery is amongst the most serious offences in this jurisdiction as prescribed by the *Penal Code* [Cap 26]¹⁶ attracting a life imprisonment as its maximum sentence. The fundamental and constitutional rights of individuals such as the right to own a property or protection of a property should always be respected and well protected.¹⁷ One of the ways, amongst others, is through the issuance of the appropriate and deterrent sentences.
63. The present robbery offence is aggravated by, inter alia, the use of the gun which is a deadly weapon.
64. Secondly, being in possession of a weapon within certain areas is a misdemeanor contrary section 84(2) of the *Penal Code* [Cap 26] and attracts a sentence of 2 years imprisonment as a maximum sentence or a fine or both. Such weapon is also liable to forfeiture. As pointed out above, the Police station is not one of the permitted areas, and the possession of the knife therein is an offence.
65. It must be noted that from the period between 1998 and 2003, Solomon Islands faced one of its darkest and saddest moments because of law and order problem, and the crime rate was extremely high. That period is now infamously and notoriously remembered as the 'ethnic tension' or "crisis". One of the

¹⁶ *Penal Code* [Cap 26],

¹⁷ *Constitution of Solomon Islands 1978*, s 8 and 9

ways that crimes were committed at the time was through the use of weapons and especially guns.¹⁸ What Mr Ata and his cohorts of robbers did, destroys our country's reputation and that could be regarded as a glimpse of the ethnic tension days.

66. In *Selo v Regina* [2017]¹⁹ SBCA 17; SICOA-CRAC 9003 of 2017 (13 October 2017), the Court of Appeal when imposing a 14 year jail sentence in a ruthless robbery case highlighted that was one of the "...most serious case of armed robbery of a commercial bank during normal business hours..." and that it "...was premeditated" and involved the use of weapons. The Court of Appeal explained that the robbers had planned the robbery and noted that they were well aware that a large number of innocent bystanders would be present and going about their lawful businesses in Honiara's commercial district. This present case has most of the features of the *Selo's case*, however, the differences are in terms of the amount of money involved, the assault and the use of a vehicle. Hence, the present case ought to receive a lesser sentence compared to that of *Selo*.

67. In the course of sentencing and mitigations submissions, counsel for the Crown confirmed that the gun is with the Police and has been verified to be a true and genuine firearm, and was functional at the time of offending. It is also worth noting that even if a toy gun is used to threaten and rob someone, it would certainly be considered a robbery. In *R v Berrell* [2003] NSWCCA 85 (27 March 2003)²⁰, the Supreme Court of New South Wales-Court of Criminal Appeal, explained that:

43. It is not correct, as the applicant initially contended, that there was no violence in the offences. Robbery with the presentation of a pistol, whether a replica or a toy, accompanied by a demand for and taking of money, bespeaks violence at law. There does not have to be the infliction of serious bodily injury for there to be violence. It is probably in the latter sense that the applicant intended his submission but it is no answer. The applicant's submission, in his written submissions, that he was just as much a victim as the people from whom he stole, cannot be accepted.

68. In this present case it is unequivocal that a real gun was used. The pointing of the gun to the victim shall be taken to mean that the victim would be shot if the demand was not complied with or the victims had resisted. As has been alluded to, a gun is a lethal weapon and it can instantly and brutally kill a person and I consider this as an aggravation. This is more serious compared to a knife or a screw driver where a victim can still escape or save himself even if at a close range. In *Fefelev Director of Public Prosecutions* [1987] SBHC 5; HC-CRAC 005 of 1987 (23 February 1987), his Lordship Ward CJ stated that:

*Any robbery where the offender is armed with a knife even if it not used directly must result in a lengthy sentence.*²¹

¹⁸ *Kilatu v Regina* [2009] SBCA 20; CA-CRAC 6 of 2009 (21 July 2009). See also *Regina v Lusibaea* [2010] SBHC 80; HCSI-CRC 291 of 2007 (30 November 2010); see *Regina v Keke* [2005] SBHC 48; HCSI-CRAC 254 of 2004 (18 March 2005); *Regina v Maoma* [2008] SBHC 48; HCSI-CRC 300 of 2006 (8 August 2008)

¹⁹ *Selo v Regina* [2017] SBCA 17; SICOA-CRAC 9003 of 2017 (13 October 2017).

²⁰ *R v Berrell* [2003] NSWCCA 85 (27 March 2003), at paragraph 43

²¹ *Fefelev Director of Public Prosecutions* [1987] SBHC 5; HC-CRAC 005 of 1987 (23 February 1987)

69. It is my opinion that the comments of Ward CJ in the case of *Fefe*, would equally apply if the offender is armed with a gun, and should even attract a higher sentence compared to a knife.
70. I am fully aware that my jurisdiction as far as this Court is concerned is that I can only impose a sentence of up to 5 years' imprisonment for the offence of robbery. If I am of the opinion that the present offending would attract a heavier sentence other than a 5 years' imprisonment term or lesser, I must commit the matter to the High Court for sentencing.²² In this case at hand, I am satisfied that the severity of it is still within my jurisdiction and I will proceed to issue the sentence.
71. The victim in the present case is a foreign national and an investor who is a Bangladesh national. He and his employees were despicably attacked at their shop within the renowned Capital Park Building in East Honiara which also accommodated other businesses and shops therein. Such actions will have adverse repercussions in terms of investor confidence and also it is a grave insult to the growth of commerce and business in the country. Moreover, this present case of robbery is an affront and threat to the pillars of democracy, constitutional rights and the freedom of each individual to move freely without being unfairly troubled and the right to enjoy the use, benefit and protection of their properties.
72. Having said that and after taking into account the principles of sentencing such as punishment and retribution, deterrence and rehabilitation, I now sentence the offender Mr James Ata to 48 months (4 years) imprisonment for the offence of Armed Robbery contrary to section 293(1) of the *Penal Code* [Cap 26]. In addition to that, I hereby sentence Mr Ata to a 1 week (7 days) imprisonment for one count of Possession of weapon contrary to section 84(2) of the *Penal Code* [Cap 26]. I note that they arose from different transactions and ought to be served consecutively.²³ Hence, the total sentence is 48 months (4 years) and 7 days imprisonment.
73. I take note of the time that Mr James Ata has spent in custody and the total sentence must either be backdated to the time when he was first remanded or the time spent in custody ought to be deducted accordingly.
74. It is my considered view that the total sentence commensurate with the magnitude and the nature of the offending, and which is also in line with the attitude of the Court of Appeal with respect to armed robbery in the recent case of *Selo-v-Regina*.²⁴

ORDERS

75. The orders of the Court are as follows:

- 1] **The offender Mr James Ata is sentenced to a term of 48 months (4 years) imprisonment for one count of Armed Robbery contrary to section 293(1) of the *Penal Code* [Cap 26].**

²² This is what happened in *Selo v Regina* [2017] SBCA 17; SICOA-CRAC 9003 of 2017 (13 October 2017).

²³ *Regina v Bade* [1988] SPLawRp 12; [1988] SPLR 348 (21 December 1988) as per Ward CJ

²⁴ *Selo v Regina* [2017] SBCA 17; SICOA-CRAC 9003 of 2017 (13 October 2017).

- 2] The offender Mr James Ata is sentenced to a term of 1 week (7 days) imprisonment for the one count of Possession of a weapon contrary to section 84(2) as read with section 41 of the *Penal Code* [Cap 26].
- 3] Both offences did not arise from the same transaction and they ought to be served consecutively. Hence, the resulting sentence is 4 years and 7 days imprisonment.
- 4] The weapon concerned with respect to the second charge, a knife, is now forfeited to the Crown pursuant to section 84(5) of the *Penal Code* [Cap 26] and the Royal Solomon Islands Police Force is ordered to destroy it.
- 5] The time spent in custody shall be taken into account and the sentence must retrospectively backdated or commenced from the date that the defendant was first remanded, that is, from the 25th February 2019.
- 6] Right of Appeal within 14 days.


PRINCIPAL MAGISTRATE FELIX HOLLISON
THE COURT

