

IN THE CENTRAL MAGISTRATES' COURT
OF SOLOMON ISLANDS

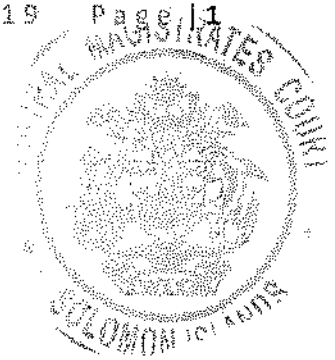
CRIMINAL JURISDICTION

CMC-CRC No. 868 of 2019

REGINA

V

DERICK LAUNGI



Date of Sentence hearing: March 20, 2020

Date of Sentence: March 20, 2020

Mr Auga for the Prosecution

Mr Fagani for the Defence

SENTENCE

INTRODUCTION

1. First of all, I thank the Defence and Prosecutions for the submissions rendered. It was useful indeed. I am now delivering my sentence.
2. Mr Derrick Laungi, you appeared before the court yesterday, in custody, and pleaded guilty to the charge of Assault Causing Actual Bodily Harm contrary to section 245 of the *Penal Code*.
3. I convict you for your guilty plea.

MAXIMUM PENALTY

4. The maximum penalty of the offences is 5 years imprisonment.

FACTS

5. As agreed by you, through your Lawyer, Mr Fagani, and the Prosecutions, the facts was that on 13th November 2019, about 10.00pm, Mr Leon Kae, the Victim was playing Ludo game with his friends in a market stall at Independence Valley, White River. You approached the Victim and his friends with a hammer and told them to leave. However, the victim and his friends continued playing and did not pay you any attention. You then hit the Victim on his forehead with the hammer and he sustained injuries.
6. You were arrested and charged for the offending of Assault Causing Actual Bodily Harm. I noted that there is no medical report tendered for the injury or any agreed fact on what sort of

injury there was. I adopt the antecedents referred to as that you are in your forty's and is a first time offender.

AGGRAVATING FACTORS

7. The attack was unprovocative. You had with you a hammer. And you ordered the victim out of the market stall. The hammer was a weapon. And you used it to attack the victim when he took no heed of your threat. It is a pre-meditated assault.
8. You committed the offence at night. In the cover of night, it is more difficult compared to daytime to see well. It hides the offending from potential witnesses. The Victim is prevented from seeing the attack. And the Victim may be vulnerable to injuring himself when escaping as it is difficult to see at night time. And also risk to other innocent By-Standers who may be afraid of the offending and try to escape only to injure themselves.
9. You were drunk. Being drunk is to be departed from your normal sense when you are sober. To act aggressively when drunk can be catastrophic because the control sense when sober is absent or is disregarded and one tends to be careless resulting in uncontrolled weighing of how one strikes another in an offending.

MITIGATING FACTORS

10. You pleaded guilty. I take it as an early guilty plea. This is because you had not delayed the matter further. You only asked that Prosecution charge you rightly in accordance to the evidence in which they did but after about 4 months. And then you pleaded guilty. Had they appropriately charged you, you would have pleaded guilty at the first time you came to court. On top of that you did not waste any resources, effort and time.
11. You are remorseful. You reconciled with the Victim while in custody. I take it that the Victim was appeased. I do not take it that you were trying to buy yourself from the offending as others might have done. You were genuine, rather.
12. You are first time offender. You did not come to have a brush with the law. I take it that you have lived well as a law abiding citizen until now you stand before the court.

CASE AUTHORITIES

13. In *R v Chachia*¹, the Offender was charged with three counts, trespass, rape and Assault Causing Actual Bodily Harm. He was sentenced to 18 months imprisonment for the Assault Causing Actual Bodily Harm. In that case the Offender broke into the Victim's (elderly woman) house and beat her until unconscious and then he raped the Victim.

¹ [2012] SBHC 145.

14. In *R v Fakatoni*², the Offender was a serving Police Officer who was charged with Assault Causing Actual Bodily Harm. He assaulted a suspected person in Police custody and was sentenced to 4 months imprisonment and \$250 fine. On appeal to the High Court, the High Court lifted up the sentence to 12 months imprisonment. The main basis for lifting the sentence was the sentence must be exemplary as the Police needs to assure the public that their standards warrants safety of its suspects and remandees. So 4 months imprisonment was manifestly inadequate for the aggravating factors present.
15. In *R v Jituvuru*³, the Offender was charged with Assault Causing Actual Bodily Harm because she beat the Victim in vengeance because the Victim teased her daughter. The Victim sustained injuries which could be life threatening. However the Offender was sentenced 4 months imprisonment and suspended to two years imprisonment fully. This was because her mitigating factors were very strong. Particularly because she was a mother and has to look after 5 children, early guilty plea, reconciled with the victim and a first time offender.

SENTENCE CONSIDERATION

16. From the above cases, the lowest sentence is 4 months imprisonment suspended to two years imprisonment.
17. In the case of *Jituvuru*, the Offender did not use any weapon but you did. Any sentence I impose will not be suspended. I find that *Jituvuru* case has more powerful mitigation points than yours. I must also reflect the sentence with the aggravating factors present as in *Fakatoni* case.
18. I start by 15 months imprisonment to reflect deterrence, the aggravating factors and circumstances of the offence. I reduce it by one third (5 months) of your guilty plea leaving 10 months imprisonment. I further reduce your sentence by 4 months for the other mitigating factors leaving a resulting sentence of 6 months imprisonment. I leave it there.
19. I take into consideration your pre-detention period of 4 months imprisonment and the likely remission of one third as per section 114(1) of the *Prisons Act* that Correctional Authority will invoke on your term of imprisonment.

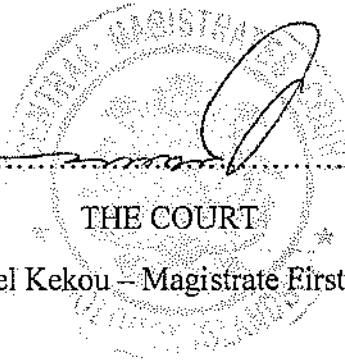
ORDERS

20. Impose a sentence of six months imprisonment.
21. However, you will be released at the rising of the court because you have sufficiently served your term in pre-detention and taking into account the one third remission that will be awarded by the Correctional Authority.
22. 14 days right of appeal is available to any aggrieved party.

² [1990] SBHC 115.

³ [2019] SBMC 8.

23. Order accordingly.



Ishmael Kekou – Magistrate First Class