

IN THE CENTRAL MAGISTRATE'S COURT
OF SOLOMON ISLANDS

CRIMINAL JURISDICTION

Criminal Case No. 1334 of 2018

REGINA

v

WESLEY LUI

Date of Hearing: 20 March 2020
Date of Sentencing Order: 20 March 2020
Date of Sentencing Reasons: 23 March 2020

Mr. J. W. Zoze for the Prosecution

Mr. S. R. Manebosa for the Accused

SENTENCE

1. On 20 March 2020, I delivered *extempore* sentencing orders for the Accused and assured counsels that the reasons for those orders will be published on 23 March 2020. These are the reasons for the sentence.

2. The Accused, Wesley Lui, a young person of almost 19 year old at the time of the offending, pleaded guilty to one count of possession of firearm, being a functional bolt action shotgun rifle, contrary to section 5(2) of the *Firearms and Ammunition Act*.¹ The maximum penalty prescribed under section 5 (2) of the said Act that fits the nature of this case is a fine of \$3000 or 5 years imprisonment, or both fine and imprisonment.
3. For this case, I have decided that only a custodial sentence is the appropriate punishment for the Accused. This sentence is based on the nature of the case and extent of his culpability or participation when he committed the offence.

Summary of facts

4. The brief facts of the case as enumerated from the signed agreed facts is that, in the morning of 22 December 2018, the Accused and three other persons, James Ata and Andrew Kesa and another unknown person came to town from Burnscreek in a white Suzuki car registered as MA6439. They were drunk when they drove towards the town. It is unknown who of the three was the driver of the car and their purpose of coming to town when in possession of the firearm.
5. When they reached the town, the car encountered a mechanical problem and they stopped in the middle of the road in front of the NPF Plaza. At that time, some police officers from Kukum Traffic sighted them when they were doing road patrol in their vehicle and advised them to push the car to the side of the road for inspection. Realising that they were drunk, the

¹ Chapter 80 of the Revised Laws of Solomon Islands.

police requested that their vehicle be towed to the Central Police Station. Instead, the Accused and his accomplices grabbed their baskets and escaped out of the car.

6. In relation to the Accused, he was seen carrying a green bag that contained the firearm when he escaped from the car. That bag was observed suspicious and so police chased after him. He dropped the bag during the course of the chase and was subsequently apprehended and arrested.
7. Police picked up the bag and opened it and found that it contained a shotgun. It appears from the facts that 3 bullets were also dropped by the Accused and were picked up by the bystanders during the chase. The firearm and the bullets were taken to the Central Police Station for expert inspection. Upon inspection, it was concluded that the firearm was a functional bolt action rifle. As a result, he was formally arrested, charged with possession of firearm and placed in custody for prosecution.

Defence mitigation

8. On hearing verbal submissions from counsel for the Accused, I accept without any contrary evidence that he was born on 2 September 1999 and therefore, he was 20 years old when he committed the offence. I accept that given his age, he is to be considered a young person. Thus, the Court must apply the usual sentencing principles when dealing with a youth offender.
9. I also accepted that his highest level of education is Form 1 at Perch School and coupled with his youthfulness, it is reasonably expected that his forethought and foresight of realising the negative consequences of possessing a firearm when it was already outlawed in our country after the

ethnic tension was quite disproportionate to an intellectually matured person. I take into account that he is a first time offender and has unequivocally demonstrated his remorse by pleading guilty to the charge. He is an elite footballer for the Marist under 16 Soccer Club in Honiara prior to his arrest. There is no suggestion by the prosecution that there is grave risk of his reintegration into his community. But what seemed to be compelling is from his counsel who in submission had stressed that the Accused has good prospects of rehabilitation and can be effectively reintegrated into any community upon his release.

10. I have considered all that have been raised on his behalf and since he is a youth, the sentencing mechanisms for youth offenders in Solomon Islands have made it clear that in criminal cases, youth offenders should receive lenient sentences compared to adult offenders.

The Aggravating factors

11. It is noted from the facts that the Accused had escaped with the bag that concealed the firearm. That act of escape with the firearm also shows his intention of wanting to keep the firearm despite the presence of the police officers. That firearm must be of some significance or utilitarian value to him and that is why he decided not to abandon it in the car. Had it not for the chase, the firearm could still be accessible and used out there for unlawful purposes by the Accused and his agents.
12. I also noted that he is drunk at the time of the offending. Being drunk while in possession of the firearm is very dangerous to the public. When a youth of a low level education is in control of a firearm under the influence of alcohol that even makes it more dangerous to the public.

Court's denunciation of possession of firearm offences in Solomon Islands

13. Despite the Accused is a youth, as raised in other past possession of firearm cases before the courts that following the ethnic tension, the possession of firearm was forbidden and outlawed in the country. Therefore, those who continued to possess firearms must be prepared to face custodial sentence. This shows the Court's stands against possession of firearms in Solomon Islands after the recent upheaval. Following the ethnic crisis, there has been a significant nationwide campaign in the media advocated by the police, faith-based organisations, NGOs, Civil Societies, the Overseas Peace Monitoring Contingents and the entire nation for the return and destruction of firearms. Our government had already publicly declared that Solomon Islands is a gun free country and therefore, it is everybody's obligation to report to police any firearm that came into their possession. There is no reason that could justify the continued possession of a firearm after the ethnic upheaval and this simple fact has not been understood by the Accused in this case. I failed to understand why he continued to hold on to that already outlawed weapon and never bother to report it to the police. The past incidents that involved the use of firearms for the sake of robbery and other unlawful activities can be the reasons why persons like the Accused herein have decided to keep the firearms. Those who still hold on to firearms in Solomon Islands must know that your deviant attitudes and character will not lead you to any greatness. You will never reach any hall of fame or even considered as nobles or superstars in your own world for continuing to be in possession of a firearm. What awaits you is only imprisonment, as this is the inevitable fate that is destined for offenders like in this case who remained deviant in the eyes of the law.

Range of sentence

14. The decided cases² that have been submitted by counsels involving guilty pleas for possession of firearm at the Magistrates Court showed a range of 5- 6 months imprisonment. Those cases involving discovery of firearm in the possession of the offenders without any act of escaping with the firearm away from the police. That differentiates those cases from the present case. As explained, the act of escaping with the rifle and it was only after a police chase that resulted in the confiscation of the rifle puts this case above those cited cases. In my view, the starting point of 8 months imprisonment is appropriate despite his youthfulness. I feel that given the need for the Courts to be vigilant in ensuring our country remains a gun free nation and more importantly, for the safety and protection of the public at large following the recent ethnic upheaval warrant this starting point for youth offenders.

Sentence

15. When all his mitigating factors are considered together with the aggravating factors in order to determine his resultant term, it is my view that a custodial sentence of **8 months imprisonment** is therefore an appropriate term for the Accused. This term is backdated to the date when he was first remanded in custody.
16. Since he had spent 15 months in custody, I order that he is to be released forthwith at the rising of the Court.

² *Baega v Regina* [2001] SBHC 105; *R v Upang, R v Hula* [1991] SBHC 67 and *Regina v Gora* [2016] SBMC 18.

17. No order for forfeiture and destruction of the firearm since the prosecution had submitted that it is still subjected to another criminal trial.
18. 14 days right of appeal applies.

(Augustine Aulanga – Principal Magistrate)

