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**IN THE CENTRAL MAGISTRATES COURT
IN THE SOLOMON ISLANDS**

Criminal Case No: 147 of 2020

In the Criminal Jurisdiction

BETWEEN: REGINA

AND: SMITH TETUHA NGIUSANGA

Before: Emily Z Vagibule

Ms Florence Hiroshachi for Prosecutions

Mr Paul None for Defence

Date of hearing: 20th of March 2020

Date of sentence: 23rd of March 2020

SENTENCE

1. Mr Smith Tetuha Ngiusanga, I recorded a guilty plea following your arraignment on the 17th of March 2020. This relates to the count of careless driving, in which you were charged with.
2. As stipulated under the Road and Traffic Act, and the Penalties and Miscellaneous Amendment Act of 2009, this offence is one that carries a maximum penalty of 5000 penalty unit¹ or six month imprisonment or both².
3. The facts before me, relates to the incident that occurred on the wee hours of February 9th 2020. I note that the vehicle you were driving was travelling along the Mendana Avenue Road. It was when you were just in front of the Wesley United Church, that your vehicle climbed onto the foot-path, and later hit the Wesley United Church fence.
4. Following your arraignment, I then adjourned the matter to the 20th of March 2020, for sentencing and mitigation submissions. On that date, only the Prosecutor and you were present. Prosecutions then proceeded with an oral submission. Your lawyer gave no instructions as to his absence. It was later on in that day that I received written submissions by your lawyer. I strongly urge your lawyer to always show some courtesy towards the court by asking a colleague to appear on instructions, or to inform the court way before starting

¹ Penalties and Miscellaneous Amendment Act 2009

² Section 40(1) of the Road and Transport Act

time, that he will not be present. This is the first and the last time such things should happen.

5. In terms of the maximum penalties involved, I am being mindful of the fact that, imposing the maximum is to be reserved for the most serious cases in this regard. I also note, that each case must be treated differently from the other. This is because, each case is founded on its own merits and circumstances. At this stage, I would like to emphasis on the fact that, comparing sentences previously imposed by the court, is some times of less assistance and imperfect guidance. This was the view shared in the case of *Sahu v Regina*³, which was also shared in the case of *Regina v Soniluvu*⁴.
6. In the submission later filed on your behalf, I was told that you have been working day and night for two days. At the time of the offending, you were feeling sleepy. As a result, you then nodded off and this was when everything leading to the incident, occurred. While I would not view this incident as being ignorant of the law, I would still say that, it was a one off situation that could have been easily avoided.
7. I am not told as to why you had to work day and night for two consecutive days. Had I been given any reasons, I would have been able to assess the urgency as to why you were still behind the wheel at four (4) in the morning. It only comes down to common sense, if you know that you could no longer contain your restlessness, then the next right thing you could have done, was to give yourself some rest. I see no point in draining out the life in you for a job where you could be easily replaced.
8. You are so fortunate to have escaped the incident without losing your life. Imagine how that would be for your family.
9. From the submissions made by prosecutions and yourself, I was able to assess the aggravating and mitigating factors involved. as for aggravating factors, the following were considered:
 - (i) The time of the offending (4:00am); and
 - (ii) Your level of culpability which I am of the view, is a little below the midrange of the seriousness involved. I say this based on the circumstances that surrounds the offending.

With regards to the mitigating factors, the following were considered:

- (i) Your early guilty plea that has saved the court's time;
- (ii) The fact that you are a first time offender;
- (iii) Your remorsefulness;
- (iv) Your cooperation;

³ [2012] SBHC 122 (*Paragraph 6 (Judgment)*).

⁴ Criminal Case No. 1297 OF 2015 & 27 OF 2016

- (v) The expenses you incurred towards repairing the Wesley United Church fence, as shown in the letter attached to your submissions; and
- (vi) Your personal circumstances.
10. In terms of sentence, I will remain vigilant of the stance in which the court should take in this regard. This is purposely to maintain consistency. On that note, I have always emphasised in past cases, how the law in breach does not provide proper guidelines when it comes to the type of sentence, the court should impose at the first instance. I note that sentences vary from bonds of good behaviour, compensation, fine, and imprisonment. With the circumstances presented in each case, it is up to the Judge or Magistrate to impose a sentence where he or she deems fit.
11. Both submissions have suggested that the appropriate sentence I should consider is, that of a fine.
12. Thus, having weighed the factors outlined in paragraph (9) and with the need for personal deterrence, rehabilitation and retribution, I will consider the suggestions put before me. With this, I now order as follows:

ORDERS

- (i) That Smith Tetuha Ngiusanga is sentence to a fine of SBD\$1500.00 for the count of careless driving;
- (ii) That the fine is payable by the 23rd of April 2020;
- (iii) In default, 2 months' imprisonment; and
- (iv) Right of appeal applies

Dated this 23rd day of March 2020.


THE COURT

EMILY Z VAGIBULE-MAGISTRATE

