



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

**AT HONIARA**

(Criminal Jurisdiction)

Criminal Case No: 469 of 2019

**REGINA**

-V-

**SILVESTA ABUSOLO**

MAGISTRATE: HOLLISON F (PRINCIPAL MAGISTRATE)

*Appearances:*

Mr I Tebakota of Police Prosecutions for the Crown

Mr Fagani, Public Solicitors Office, for the Defendant

*Date of Mitigation: 31<sup>st</sup> of March 2020*

*Date of sentencing: 7<sup>th</sup> April 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 Silvesta Abusolo was charged with one count of Simple Larceny contrary to section 261(1) of the *Penal Code* [Cap 26]. Previously, he was charged with one count of House Breaking contrary to section 300(a) of the *Penal Code* [Cap 26] but the charge was reduced to one of Simple Larceny.
2. The defendant pleaded guilty to the said charge. I now convict him based on the plea entered.

**Antecedent**

3. The defendant is Mr Silvesta Abusolo, a 20 year old native of Aliksakaka village, Aola area, East Guadalcanal in Guadalcanal Province.

4. The victim is Mr Edwin Ngele who is also from the same village.

### FACTS

5. The incident occurred on an unknown date between the 1<sup>st</sup> and 31<sup>st</sup> of March 2017 at Alisakaka village in East Guadalcanal on Guadalcanal in Guadalcanal Province. On the date of offending, the defendant with five other boys went to victim's house, which is also the crime scene, to buy beers.
6. When they arrived at the victims' house, the victim's domestic servant told the boys that the key of the liquor shop was missing and the shop cannot be opened.
7. Whilst the boys were talking with the complainant's servant, Mr Abusolo entered the house by climbing through the window and took one carton of SB Beer with an estimated value of SBD 240.
8. The defendant with the other boys were under the influence of alcohol.
9. The defendant and the boys drank the beers that were stolen also that night.
10. He was charged with one count of Simple Larceny contrary to section 261(1) of the *Penal Code* [Cap 26].

### DISCUSSION AND ANALYSIS

11. In sentencing, the classic principles of sentencing such as punishment, retribution, deterrence and rehabilitation must always be taken into account.
12. Moreover, the sentences imposed must be proportionate with the severity of the offence.
13. It is an established practice that each case must be decided based on its own merits, facts and circumstances.
14. Section 261 (1) of the *Penal Code* [Cap 26]<sup>1</sup> provides as follows:  
  
*261.-(1) Stealing for which no special punishment is provided under this Code or any other Act for the time being in force is simple larceny and a felony punishable with imprisonment for five years.*
15. The maximum sentence for simple Larceny is 5 years imprisonment which shows that theft is quite a serious offence in the Solomon Islands.

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<sup>1</sup> *Penal Code* [Cap 26], s 261(1)

### Aggravating features

16. The aggravating factors in this case are as follows:
17. **Maximum penalty.** The maximum penalty of 5 years shows that theft or stealing is a fairly serious offence.
18. **Pre-meditation and planning.** The facts show that the defendant committed the offence with the assistance of others which illustrated that it was premeditated. It transpired that the boys who were talking to the domestic servant was purposely to distract the servant and to give the defendant a chance to climb through the window to get the carton of beer.
19. **Financial and economic loss to the business.** A liquor shop in a rural setting is a relatively small business and the loss of a carton of beer is a great financial loss for such a small sized business.
20. **Drunk and Criminal Trespass.** The defendant was drunk at the time of the offending and the entering of the shop technically amounts to criminal trespass as the defendant entered the liquor shop without any lawful authority or authorization.

### Mitigating Features

21. The mitigating factors are as follows:
22. **Early guilty plea.** He entered an early guilty plea as soon as the burglary charge was reduced to the present count of simple larceny. This is a sign of remorse.
23. **First time offender.** The defendant is a first-time offender until his conviction this afternoon. This means that he has a good and clean record in the past.
24. **Youthfulness and Prospects of Rehabilitation.** He is 20 years of age which means that he is still a young adult and has a long life ahead, and also has a high chance of rehabilitation.
25. **Items missing Refunded.** The carton stolen was replaced with money and I accept this as a form of mitigation.
26. **Delay.** The offence was committed in 2017 but the initial charge of House Breaking was commenced only in 2019 with no reasonable explanation as to the cause of the delay. This must be considered in favor of the defendant.
27. **Time spent in custody.** The defendant was in remand since the 20<sup>th</sup> of November 2019.

### Comparative Sentences:

28. In *Eapa-v-Reginam* [2001] CC No. 248 of 2001<sup>2</sup>, the offender was sentenced to a term of 9 months imprisonment in the Magistrates Court. The matter was then appealed to the High Court, and the learned High Court Judge ordered that the sentence be suspended for two years on the basis that the property stolen was recovered and given back to the owner.
29. In *Regina v Luimalefo* [2017] SBMC 46; Criminal Case 958 of 2017 (26 September 2017)<sup>3</sup>, the defendants pleaded guilty to one count of Simple Larceny contrary to section 261(1) of the *Penal Code* [Cap 26]. Mr David Junior Malefo was sentenced to an imprisonment term of 1 ½ years' imprisonment whilst Mr Tome Gagame Junior was sentenced to an imprisonment term of 2 years. The basic facts of that case were that on the 11<sup>th</sup> of September 2017, the defendants stole the following items which were owned by an expatriate business man Mr Jonathan Pestana: SBD10, 000 and USD 5,000 that the victim left in his car parked behind his shop at the Kukum Highway in Honiara.
30. In *Regina v Ilala* [2017] SBMC 18; CMC-CRC 325 of 2015 (14 June 2017)<sup>4</sup>; the defendant was sentenced to 12 months of imprisonment for one count of Simple Larceny contrary to section 261(1) of the *Penal Code* [Cap 26]. The defendant was also sentenced for other offences.
31. In *Regina v Kemakeza* [2008] SBHC 41; HCSI-CRC 467 of 2007 (3 September 2008)<sup>5</sup>, the defendant was sentenced to 18 months imprisonment term for one count of Simple Larceny contrary to section 261(1) of the *Penal Code*[Cap 26]. Mr Kemakeza was also sentenced for other offences which were ordered to be served concurrently.
32. In the present case, I am of the view that it shall be classified towards the lower end of the scale with respect to its severity taking into account what was stolen, its value, and basically the nature of the theft.

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<sup>2</sup> *Eapa v. Reginam* [2001] SBHC 77; HC-CRC 248 of 2001 (2 November 2001)

<sup>3</sup> *Regina v Luimalefo* [2017] SBMC 46; Criminal Case 958 of 2017 (26 September 2017)

<sup>4</sup> *Regina v Ilala* [2017] SBMC 18; CMC-CRC 325 of 2015 (14 June 2017);

<sup>5</sup> *Regina v Kemakeza* [2008] SBHC 41; HCSI-CRC 467 of 2007 (3 September 2008)

### Specific and General deterrence

33. I understand that it is my duty to issue a sentence that encompasses both specific and general deterrence. I must ensure to issue a sentence that send a warning to the general public that such property related offences especially theft are not acceptable in our societies, communities, and more importantly our country as a whole.

### Starting Point

34. After having considered the relevant factors especially the aggravating features and the circumstances of this case, I am of the view that a starting point of 24 months is appropriate.
35. *Early guilty plea.* He entered an early guilty plea as soon as the burglary charge was reduced to the present count of simple larceny. I deduct 7 months to reflect this.
36. *First time offender.* The defendant is a first-time offender and has no previous conviction and I deduct 3 months to reflect this.
37. *Youthfulness and Prospects of Rehabilitation.* He is 20 years of age and has a high chance of rehabilitation and I deduct 2 months to reflect this.
38. *Items missing Refunded.* The carton of beer stolen was replaced and I accept this as a form of mitigation. I deduct 2 months to reflect this.
39. *Delay.* The defendant was only charged on the 20<sup>th</sup> June 2019. This is a delay of 2 years since the time of the offending in 2017. There is no explanation as to why the laying of the information was delayed for 2 years. I deduct 4 months to reflect this.
40. *Time spent in custody.* The defendant was in remand since the 20<sup>th</sup> of November 2019.
41. Therefore, I am satisfied that 6 months of imprisonment is appropriate for the present case.

### CONCLUSION.

42. Larceny is a fairly serious offence in this jurisdiction as prescribed by the *Penal Code* [Cap 26]<sup>6</sup> with a maximum sentence of 5 years imprisonment. An offence which involves the deprivation of the owner of a property is stealing and is known as simple larceny or theft. The right to own a property or to protect it is entrenched in the *Constitution*<sup>7</sup> and the courts will continue to take these fundamental rights into consideration when delivering any judgment or sentence when the offence involves a property-related offence.
43. The present case shows a lack of respect and the actions of the defendant clearly depict someone who is ignorant with respect to such constitutional and property rights, and perhaps it is a sign of a decaying

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<sup>6</sup> *Penal Code* [Cap 26], s 261(1)

<sup>7</sup> *Constitution of Solomon Islands* 1978, s 8 and 9

society. Such disgraceful actions must be denounced in the strongest terms by the courts. Parents must continue to discharge their parental duties and to advise and guide their children to possess desirable attitude and behaviors, as the future of this country is vested on the shoulders of the younger generations.

44. In conclusion, I hereby sentence the offender Mr Abusolo to an imprisonment term of 6 months for one count of Simple Larceny contrary to section 261(1) of the *Penal Code* [Cap 26]. In addition to that, I take note of the time that Mr Abusolo has spent in custody which is around 4 months since November 2019. The total sentence must be backdated to the date when he was first remanded in custody. In view of this, I am satisfied that the defendant has served a substantial time in custody and he should be released at the rising of the court.
45. I hope this sentence will teach the offender a lesson and like-minded persons to refrain from involving in such activities, and also to send a message of deterrence to the members of the general public that involving in such unlawful activities have severe consequences.

#### ORDERS

46. The orders of the Court are as follows:

- 1] **The offender Mr Sylvesta Abusolo is sentenced to an imprisonment term of six (6) months for one count of Simple Larceny contrary to section 261(1) of the *Penal Code* [Cap 26].**
- 2] **Time spent in custody shall be taken into account and deducted accordingly or backdated to the date that the defendant was first remanded. In view of the period of 4 months that he has already spent in custody, I am satisfied that he has served a considerable time in prison and he shall be released at the rising of the court with immediate effect.**
- 3] **Right of Appeal within 14 days.**

  
  
**PRINCIPAL MAGISTRATE FELIX HOLLISON**  
**THE COURT**