



IN THE CENTRAL MAGISTRATES' COURT
OF SOLOMON ISLANDS

CRIMINAL JURISDICTION

CMC-CRC No. 359 of 2020

REGINA

V

DERRICK LIO

Date of Sentencing submissions: April 14, 2020

Date of Sentence Ruling: April 15, 2020

Constable Maue for Prosecution

The Accused in person

SENTENCE

1. You appeared before the court yesterday with two traffic offences:
 - i. Careless and inconsiderate driving contrary to section 40(1) of the *Road Transport Act*; and,
 - ii. Presence of alcohol in person's blood contrary to section 43A(1)(a) of the *Road Transport Act* as amended by the *Police and Transport Legislation (Amendment)(Alcohol Testing) Act 2016*.
2. You chose to represent yourself and pleaded guilty to the offence. I now convict you for the offences.
3. The maximum penalty of the offences:
 - i. Count one: For first time offenders, 5,000 penalty units. For second time offenders, 7,000 penalty units. Initially, the Traffic Act had the sentence at \$500 for first time offenders and \$700 for second time offenders. You might have realized how dramatic the shift has been. It only shows of how serious our Legislators are to condemn such offences. The same is for the second count.
 - ii. Count two: For first time offenders, 10,000 penalty units or 12 months imprisonment or both as per section 43A(1)(a) & (b)(i) of the *Road Transport Act* as amended by the *Police and Transport Legislation (Amendment)(Alcohol Testing) Act 2016*. On the same for the second time or more, is \$20,000 or 2 years imprisonment, or both.
4. You committed both of the offences on 15th February 2020. It was around 7.55pm on that day when you were driving a Grey Toyota Corolla vehicle with registration MB7892 at the Vura Road heading down to Kukum SDA. At that time, a yellow Toyota Hiace vehicle with registration number MC2658 was travelling on the other lane in opposite direction to you on the same road. It was driven by Robert Bongi. You drove carelessly to that yellow vehicle, and collided with it. Both your vehicle and the yellow vehicle had damages. Police

was called and you were tested for alcohol. The findings had you with alcohol level that is beyond the limitation, particularly, 0.196% of alcohol.

5. I find no aggravating factor but only mitigating factors in your benefit. You pleaded guilty at the first opportunity to saving time, effort and resources. You were remorseful. Your personal circumstances was that you are a husband and a father of 4 children. You have no previous conviction.
6. For sentencing, it is not remarkable to note that this court have received a lot of like-offences and has time and time again tried to impose sentences that would deter Offenders and generally to reduce such offending. It seems that those sentences have not been heard by the large populace. It may be probably because the sentences have not been made known. However, courts should continue to echo its seriousness in condemning such offences. I am doing now in this case. Thus, I will factor deterrence for the prevalence of this offence.
7. Having gone through case laws of the Magistrates Court for consistency and guide, and in the latest, this year, I find two case laws unreported, relevant to guide my sentence:
 - i. In the case of *R v Quam*, the Offender pleaded guilty to careless driving contrary to section 40(1) of the *Road Transport Act*. The Court took into account the aggravating factor of breaching the Highway rule to make a sharp U-Turn at a forbidden area to cause the accident and deterrence and prevalence of offence. The starting point then was \$3,000 fine. The Court further reduced the sentence for the mitigating factors of early guilty plea, remorse, the Offender's repair of the damaged vehicle (victim), and the personal circumstances of the Offender. The sentence was reduced to \$1,000. His driving licence was not suspended because the Offender relied on driving to earn his living.
 - ii. In the case of *R v Sinala2*, at the Magistrates Court, the Offender pleaded guilty to presence of alcohol in person's blood contrary to section 43A(1)(a) of the Road Transport Act as amended by the Police and Transport Legislation (Amendment)(Alcohol Testing) Act 2016. The Court took into account that there was no aggravating factors but for the prevalence of offence and deterrence, the starting point was \$3,000 fine. The mitigating factors of early guilty plea, fatherly obligations to three small children, first time offender, remorse, rehabilitation and breadwinner had the sentence reduced to a fine of \$1,000.
8. As from the two cases, I see that fine is appropriate in this case.
9. With count one, I take it that this case is lower than that *Quam* case. In *Quam* case, the Offender breached a road rule as an aggravating factor. The current case does not have any aggravating factor. Therefore, the starting point should be lower. I think appropriate is \$2,000 fine. Taking into account all the mitigation factors, the fine is reduced to \$500.

¹ Criminal Case 323 of 2020.

² Criminal Case 110 of 2019.

10. In relation to count two, it is similar to *Sinala* case. A starting point of \$3,000 is a must to reflect prevalence and deterrence. And also with the mitigating factors, the sentence is reduced to \$2,000. I will make no order for suspension of driving licence as you need it for your livelihood.
11. I will have the sentences be taken concurrently. And considering the pandemic measures taken by the Government and its economic effects, I find that the general populace are also affected monetarily. I, therefore, reduce \$1,000.
12. Please, I ask you not to come back to the court for any other offences. Take this opportunity that you are lucky for the very lenient sentence as, for, others have not had the opportunity you have now. But if you dare return, I can assure you that it will be regrettable because there will be no leniency. For example, for the case of *R v Sakua* before this court, for the first offending of alcohol in person's blood in May 2019, he was fined \$2,000. The second time of offending of the same charge on March 2020, he was fined \$7,000. You do not want to go through that.

ORDERS

- i. Fine of \$1,000 to be paid by 3pm, 5th May 2020.
- ii. In default, to be imprisoned for 40 days.
- iii. 14 days right of appeal applies.
- iv. Order accordingly.



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Ishmael Kekou Magistrate First Class