

IN THE CENTRAL MAGISTRATE'S COURT
OF SOLOMON ISLANDS
CRIMINAL JURISDICTION



Criminal Case No. 977 & 1203 of 2018

REGINA

v

PRESLEY TAKELI SANGA

Date of Hearing: 28 April 2020

Date of Sentence: 30 April 2020

Mr. I. Tebakota for the Prosecution

Accused appeared for himself

SENTENCE

1. The accused, Presley Takeli Sanga ("accused") has two separate cases before this Court for sentence. One is a traffic matter and the other is a malicious damage. They occurred on different dates involving different complainants. For this proceeding, I decide to consolidate and address the sentencing remarks for both matters together for purposes of convenience of the parties, including the Court.
2. The accused pleaded guilty to a charge of careless driving contrary to section 40 (1) of the *Road Transport Act* and a charge of malicious damage contrary to section 326 (1) of the *Penal Code*. He decided to represent himself and take his plea to the charges without a lawyer.

3. I will first begin with the traffic matter.

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4. The facts of this case disclosed that the accused was working for the Solomon Telekom Company Limited at the time of the offending. In the evening of 19 October 2018, he was driving a yellow Suzuki vehicle owned by his employer and heading westerly direction towards White River. As he approached the junction at the White River 01 bustop area, it was observed that he was driving behind a black Hilux. When he almost reached the junction, he thought the Hilux would turn in the junction. Because he was in a hurry, he did not have a proper lookout and therefore bumped into the right side of the back of that Hilux. That Hilux did not stop when the accident occurred, indicating that the driver was unaware of the collision. It was sometime after the accident upon investigation that the accused's vehicle was identified and resulted in the prosecution of the matter.
5. He admitted that the reason he involved in the accident was due to his failure to properly look and concentrate to the vehicle in front of him, partly because he was rushed to collect his family properties from his house due to his landlord had advised him to lock the house that evening. If he was not threatened by the landlord, the accident could have been averted.
6. It was brought to the Court's attention that his employer had already paid \$6,470 for the cost of fixing the damage caused to the Hilux. It is understandable that the vehicle was already fixed or repaired. By implication, this shows he has vindicated his mistake by restoring the damage part of the vehicle to its original position.
7. From the submission of the accused, I find the following as mitigating factors. That he pleaded guilty to the offence. Ordinarily, this saves the Court's time and resources. It also demonstrates his remorsefulness and acceptance of criminal responsibility. He is a first time offender with no prior conviction. He is a family man with 3 children. Two of them are currently attending school at Moana Primary School in Lata, Temotu Province. He is currently working as a probationer for the B-Mobile Telecommunication Company and is the only working parent in his family. He is solely responsible for his children's school fees since his wife is unemployed. He is an adopted child of his family and his siblings

and other family members also depend on his financial income for support. Therefore, this shows he has a huge family responsibility. Before working for the B-Mobile, he has been working as an Assistant Engineer for Solomon Telekom Company Ltd for a considerable number of years without any bad record. That reputation speaks volume of his good character and he is held in high regard.

8. I have considered his mitigating factors. They are compelling. They inevitably deserved credits and due weights for purposes of his sentence.
9. For the aggravating factors, I find the accused's manner of driving in a state of 'rush' as he admitted poses risks and danger to pedestrians and road users the material time. I take judicial notice that there was a market at the White River 01 junction and is normally busy with people and vehicles especially during evenings. Hence, such driving at that busy location can pose risks to other road users. The Hilux sustained a damage to its right back brake light and surrounding areas to it. The damage was valued \$6,470 caused solely by the accused's careless driving. This is an aggravating factor since it had caused the other vehicle to sustain damage which otherwise could have been avoided as a result of his erroneous driving.
10. Section 40 (1) of the *Road Transport Act* makes it an offence for a person who drives a motor vehicle along the road without due care and attention. The maximum penalty for this offence is a fine of \$5,000 or 6 months imprisonment according to section 8, Schedule No. 20 of the *Penalties Miscellaneous Amendments Act*¹. This maximum penalty reflects the intention of our legislators to discourage careless driving because of the dangers that may arise from it. A vehicle can be dangerous if it is not properly and carefully driven. Given the increasing number of vehicles and if I can add, vehicle accidents in Honiara, it is equally important that the safety of road users, pedestrians, properties and the list goes on, must be protected through the effective enforcement of this law when it comes to sentencing of traffic offenders.
11. The maximum penalty prescribed by this law simply tells us that if you drive carelessly or in like manner and convicted in court, you are expected to pay a hefty fine or send to prison. Nothing more nothing less. Therefore, it is important for drivers to pay attention to your driving and take a moment to consider the consequences of your actions if you are tempted to engage in an unsafe behaviour when behind the wheel.

¹ 2009

12. Notwithstanding his explanations that the accident occurred because of his hurriedness to transport his family properties attributed to the threat from his landlord to vacate the house and that the vehicle has already been repaired, those are not convincing grounds to exonerate or condone the offence of careless driving. They did not even lower the standard required of a careful and prudent driver in order to exempt him from the penalties prescribed by the law. Payment for fixing of the vehicle or even compensation per se arising from a criminal offence is a matter only relevant for the mitigation.
13. When I consider his case, the nature of the damage is not significant compared to other careless driving offences. Also, the Hilux had already been fixed and therefore, what the owner of the vehicle might have complained of had already been redressed. This puts this case at the lower scale of careless driving offences.
14. After carefully considering all these pertinent factors and balancing them with the aggravating and mitigating features, and the delay of almost 2 years that has been taken to finalise this case, the appropriate sentence is a sentence of **good behavior bond for 6 months in the sum of \$1000.**

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15. The malicious damage charge occurred on the next day, 19 October 2018. The brief summary of the facts of this case revealed that the accused co-worker, Albert Rukale, went to find him at his residence at Marble Street, Central Honiara. Albert realised that he was drunk. Albert asked him to hand over the key of the vehicle to him so that he would give it to their boss. Instead, he went and grabbed a galvanised iron and said that he would damage that vehicle. Without further warning, he smashed the front screen of the vehicle with that iron and it was completely damaged.
16. In his explanations, he said that the reason he smashed the front screen of that vehicle was due to his disagreement with his employer for false promises about the terms and conditions of his job which he had been denied entitlement of since his employment. And also for some of the biased treatments and decisions of his boss towards his junior co-workers.
17. I have listened to the accused explanations and unfortunately, they are unconvincing. It must be understood that if there is any disagreement with his employer, that must be resolved within the prescribed or appropriate

methods for resolving of disputes. The law does not allow him to destroy his employer's vehicle in the event of any job disagreement because that is a crime. The accused unfortunately decided to take the law into his own hands which is a wrong thing to do.

18. There are obvious aggravating factors that make his offending quite serious. The value of the screen damaged was \$9,027.9 as evidenced in the proforma invoice tendered by the prosecution. This is quite a significant amount of money. The accused was also drunk and armed with the galvanised iron when he damaged the vehicle. The offending was totally unprovoked although there was a reason for it.
19. The accused action at the material time went beyond what an educated and employed person of his standing should do when having disagreement with his employer. It could be said that because he was under the influence of alcohol that was why he was insane and acted out of character the material time. Regrettably, that was the usual lame excuses advanced by defendants to try and water down the penalties to be imposed on them. People should know that intoxication is not a good reason to reduce the offending when committing a crime. In fact, it aggravates the offending because whilst drunk and armed with an iron and acted in the way as the accused did could create fear to other bystanders. The accused action when considered in whole is totally egregious.
20. There is no evidence of compensation or restitution of the property to the employer so this even exacerbates his offending. I understand that as a result of this incident, he was already terminated from his then employer - the Solomon Telecom Company Limited.
21. For comparative sentences involving damage of vehicles, in *Regina v Gila Kiko*², the accused pleaded guilty to damaging a window screen of a vehicle with a stone at Savo area, West Honiara. He committed the offence when he was drunk and after his request for money was refused by a police officer. The value of the screen was \$10,244.18. He was sentenced to 6 months imprisonment. The *Kiko's case* is very similar to this present case except that the value of the damage is significant than the present case.

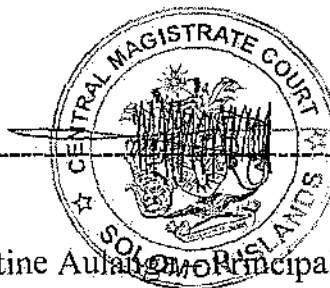
² CMC Criminal Case No. 374 of 2013

22. In *Regina v Denish Meiya*³, the accused pleaded guilty to damaging the rear brake light of the Lata Police vehicle with an object during a police patrol at Gracious Bay. That object also caused bent to the body parts close to that brake light. He also swore at the police and assaulted one of them when he was apprehended following that incident. He was charged with other offences apart from the malicious damage. He was sentenced to 5 months imprisonment despite the value of the brake light and the bent was unknown. This sentence reflected the Court's stand and revulsion of offences committed against police officers in the course of performing their duties. The *Meiya's case* is less serious than the present case in that the damage caused to the vehicle is not that substantial compared to the present case of the accused.
23. The prosecution suggested a noncustodial sentence for the accused. That submission in effect says that if you damage the screen of a vehicle of another person even though with high value, you will still not go to jail. I refuse to accept that submission because it will send a wrong message to the public especially to disgruntled employees in the workplace environment that damaging of their employers' valuable properties is still permitted and can be condoned by the Court with petty or trivial penalties. Such message is very sensitive and will indirectly encourage future potential offenders to commit this offence or similar like offences, taking into account that disagreements between employees and employers in Solomon Islands are common.
24. This offence involved a complete damage of the front screen of a vehicle owned by a telecommunication company of Solomon Islands. It was committed by a disgruntled employee who is the accused herein. This is not a game, or a prank, or a joke for the purpose of ridiculing or humiliating the company with such arrogant behavior. It is a crime and a goal sentence of some kind is practically certain. Hence, if the Court is to condone this offending with a noncustodial sentence is just as guilty as the accused who perpetrates it. Based on these reasons, it is my view that the prosecution's submission is improper and at odd with the nature of this offending.
25. For purposes of his sentence, I treat him as a first time offender. I give credit to his early guilty plea and take into account all his mitigating and personal factors. I have also considered the delay of about two years this matter has taken to this far. However, the record of the Court shows that the accused had failed to appear in Court under warrant since 17

³ EOIDMC-CRC No: 02 of 2016 (Lata case)

December 2018 until 31 March 2020 which contributed to this delay. The delay here is due to his own fault and therefore, he has no benefit of the delay for his sentence.

26. The sentence that I will pass must not only reflect his personal circumstances and mitigating factors, but one that must also protect the public in particular the business community that owned valuable properties such as vehicles from being damaged by drunkard and disgruntled employees. It must send a right message that any disagreements within the employment relationship must be resolved in an appropriate and lawful ways, and not through resorting to crimes.
27. The nature of his case is midway of the *Meiya and Gila's case*,⁴ I am satisfied that in the interest of justice, the sentence for the accused is one of custodial sentence. The maximum penalty for this offence is 2 years imprisonment. I therefore sentenced him to **5 ½ months** imprisonment for this offence.
28. Any presentence period in custody is to be deducted.
29. 14 days right of appeal applies.
30. Order accordingly.



(Augustine Aulaton, Principal Magistrate)

⁴ See fn 2 and 3 above.