

**IN THE CENTRAL MAGISTRATES' COURT)
OF SOLOMON ISLANDS AT HONIARA)
(Criminal Jurisdiction)**

Criminal Case No. 369 of 2021

REGINA

-v-

STANLEY SUSUBURI

Date of plea: October 5, 2021
Date of hearing: October 5, 2021
Date of sentence: October 6, 2021

*Martha Mutukera for the Crown
Daniel Kwalai for the Defendant*

SENTENCE

- [1] The defendant, Mr. Stanley Susuburi, is charged together with Mr. Sam Tome for an offence of *Restriction of Movement of Persons in Honiara* contrary to Clause 4 (1) and (2) (a) and (b) of the Emergency Powers (COVID-19) (Honiara Emergency Zone) (Restriction of Movement) Order 2021 and Regulation 15 (1) (a), (2) and (4) of the Emergency Powers (COVID-19) (No-2) Regulations 2021. He pleaded guilty on arraignment. Today is for delivery of sentence, I now do so.
- [2] The co-defendant, Mr. Sam tome is currently under warrant of arrest ("W.O.A."), and the police have yet to execute the warrant.
- [3] The facts are that, on August 29, 2021 at 9:00 p.m., the defendant, Mr. Stanly Susuburi without lawful excuse was not at his place of residence namely, Kena Hill but was found walking along Vara Creek road. The defendant lived at a house of a relative by the name of Neham Pipi. He works as a volunteer for the Community Police Committee at Vara Creek.
- [4] On the date of offence, the defendant was approached by a police truck that drove up to him. They stopped and questioned him, the defendant gave an unsatisfactory explanation. So, they invited him to the vehicle and transported him to Central Police Station where he was formally arrested and placed in custody for further dealings.
- [5] The prescribed penalty is 15,000 penalty units or 5 years imprisonment or both, which reflects our legislature's seriousness to this offence, specifically its catalyst nature to possible outbreak or community transmission of covid-19. Contrariwise, it is acknowledged that currently, there is no registered case of positive covid-19, and this



was a mock lockdown exercise to test the nation's preparedness for a real 'covid-19 outbreak' situation.

- [5] All cases are considered and decided based on their own set of facts and circumstances. It is settled law that the maximum penalty is only set to apply in the most extreme type of offence. Perhaps, in cases involving persons who were found breaching a lockdown order and later tested positive for the virus, or something similar or extreme to it. Here, there is virtually no risk of any transmission of covid-19. However, it was only made to sharpen, tighten and prepare our nation for worst situations.
- [6] Miss. Mutukera of counsel appearing for the Crown submitted that, although the country has no record of positive patient at the time of the restriction and even to date, this covid-19 is a worldwide pandemic and the Prime Minister was authorized to make certain decisions and actions in addressing issue pertaining to covid-19. Thus, submitted that the court should impose a penalty that encapsulates both general and specific deterrence.
- [7] I fail to see the rationale for that argument, simply because on the face of the facts and circumstance alone, one would have concluded that this is not the worse nor medium range of the offence. Asking the court to impose a sentence of specific deterrence on a first-offender for such an offence and circumstance would in my view, incorrect.
- [8] In *Regina v Madeo*¹ ("*Madeo*"), Brown J, referred to The New Zealand Court of Appeal's judgment, which was accepted in Australia, where it explained the principle of "general deterrence" as follows:

"We should say at once that this last argument omits one of the main purposes of punishment, which is to protect the public from the commission of such crimes by making it clear to the offender and to other persons with similar impulses that, if they yield to them, they will meet with severe punishment. In all civilized countries, in all ages, that has been the main purpose of punishment, and it still continues so. The fact that punishment does not entirely prevent all similar crimes should not obscure the cogent fact that the fear of severe punishment does, and will, prevent the commission of many that would have been committed if it was thought that the offender could escape without punishment, or with only a light punishment. If a Court is weakly merciful, and does not impose a sentence commensurate with the seriousness of the crime, it fails in its duty to see that the sentences are such as to operate as a powerful factor to prevent the commission of such offences". (Emphasis mine)

¹ [2005] SBHC 43; HCSI-CRC 492 of 2004 (8 March 2005)

- [9] In explaining the importance of general and specific deterrence, Lawry J, in *R v Fakani*² (“*Fakani*”), said at paragraph 15:

“His previous good character and in particular his conduct since the offence satisfy me that he is not in need of a sentence to specifically deter him from similar offending in the future. However, the offending is of sufficient seriousness that the Court has no option but to consider a sentence of imprisonment.”

- [10] Equally, in *R v Limana*³ (“*Limana*”), Pallaras J (as he then was), stated at paragraph 26 of his sentence:

“...Specific deterrence is most relevant in cases where an offender repeats his criminal conduct because he has demonstrated that hitherto he has not been deterred from committing such acts...”

- [11] I accept that for this defendant, his previous good character and the circumstance of the offending does not warrant a sentence to specifically deter him. General deterrence may be of less significance as well, although I may place some emphasis on it.
- [12] Apart from his ignorance, there is literally no aggravating feature in this case, compared to *R v Auga*⁴, and *R v Iotoa & others*⁵, where their existence at the place of arrests were because of the crave for smokes, and the aftermath of drinking Kava during the lockdown hours. In the case before hand, it is undisputed that the defendant was walking to get a torch when he was arrested. He was preparing to commence his nightshift as a Community Policing Officer at that point in time. Mr. Kwalai of counsel for the defendant conceded that he forgot that the lockdown orders were still on foot.
- [13] For his personal circumstances, Mr. Kwalai of counsel for the defendant submitted that the defendant is a young 19 year old youth who is an active member of the Community Policing at Vara Creek, which has helped the communities in and around Vara Creek area on antisocial behaviors and other criminal activities or petty crimes.
- [14] In relation to mitigation, I have identified the following as favorable for him. First, he has entered an early guilty plea, which undoubtedly saves the court’s time and resources if the matter proceeds through trial. He has appeared deeply remorseful in court, which shows his genuine regret and owning up to his mistake. He is a first-offender, meaning, he has no prior conviction. This would be the first encounter with the law. And finally, he has been cooperative with the police during arrest, although he was later issued a warrant of arrest after failing to attend his few court dates, which is the basis for him appearing from remand today.

² [2021] SBHC 65; HCSI-CRC 554 of 2015 (21 May 2021)

³ [2013] SBHC 189; HCSI-CRC 318 of 2011 (2 December 2013)

⁴ SBMC-Criminal Case No. 666 of 2021

⁵ SBMC-Criminal Case No. 659 of 2021

- [15] Counsel had submitted on the need for the court to consider the time spent under police custody during the arrest, and now on remand as sufficient punishment for the defendant. He sought an order under s.35 of the Penal Code, for the defendant to be discharged of this offence without conviction, basically as he said, because the defendant is a young person with good character, and was doing a volunteering work for the community's betterment at the time of offence. In the alternative, he asked the court to impose a good behavior bond, and had told the court that a fine would burden the defendant who is currently unemployed.
- [16] It is an established tariff for this offence that courts imposed sentences ranging from good behavior bond, to fines, and in serious cases, imprisonment⁶. Therefore, after comparing the case at hand with similar case authorities, and having balanced it with the individual facts and circumstance of this case, and weighing it to the aggravating and mitigating factors, I am convinced that a rehabilitation sentence is more fitting for the defendant.
- [17] I shall now proceed to address the submission on; whether the court should invoke s. 35 of the Penal Code. Should I find on the affirmative, the matter will be concluded as such, and if however, I find on the contrary, I will proceed to consider good behavior bond, or fine sentences. Section 35 is quoted as follows:

“Where, in any trial, the court thinks that the charge against the accused person is proved but is of opinion that, having regard to the character, antecedents, health or mental condition of the accused, or to the trivial nature of the offence or to the extenuating circumstances in which the offence was committed, it is not expedient to inflict any punishment, the court may, without proceeding to conviction, make an order dismissing the charge either absolutely or conditionally.”

- [18] I noted that the defendant is a 19 year old youth who is currently single and have a lot to explore and learn in life. He has no prior convictions, and was at the time of offence working as a volunteer Community Policing Officer. In fact, he was arrested after which he had thought the lockdown had ended and wanted to resume his nightshift duties, to maintain a peace and safe neighborhood. This is a fact that the Crown does not dispute. Hence, having considered the totality of what I have outlined, it is in my opinion that the prerequisite requirements of s.35 have been made out, or that the defendant's character and antecedent, including the circumstance in which the offence was committed, falls within the ambit of s.35. I considered his time under police detention

⁶ *Regina v Elliot* SBMC-Criminal Case 534 of 2020, *Regina v Foufaka* SBMC-Criminal Case 529 of 2020, *Regina v Aike & Others* SBMC-Criminal Case 525 of 2020, *R v Auga* SBMC-Criminal Case No. 666 of 2021, *Regina v Mae* SBMC-Criminal Case No. 667 of 2021, *Regina v Tela & Others* Criminal Case No. 657 of 2021, and *Regina v Iotoa & Others* SBMC-Criminal Case No. 659 of 2021

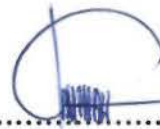
and on remand as justified, because of his failure to attend few court hearing dates, and the right of police to detain him. However, that's almost beyond enough to serve him a lesson. Therefore, in my discretion, order dismissing the charge against the defendant, and discharge him forthwith without conviction, absolutely.

ORDER

[19] Having discussed the above, I hereby make the following orders:

- (1) Invoke section 35 of the Penal Code, and order dismissing the charge against the defendant.
- (2) Consequent to above order (1), the defendant is discharged without conviction, absolutely.
- (3) The defendant to be released at the rising of the Court.
- (4) Right of Appeal applies within 14 days.
- (5) Order accordingly.

THE COURT



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MR. LEONARD B. CHITE
Principal Magistrate
Central Magistrates Court

