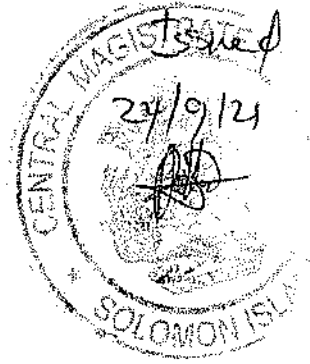


REGINA v TONY DAGI



Case Number: Criminal Case No. 620 of 2021
Date of sentence: September 24, 2021
Court: Central Magistrates' Court – at Honiara
Coram: Deputy Chief Magistrate, Ricky Iomea
Counsel Names: Lindsay Tamaika for the Crown (ODPP)
Donation Houa for the Accused

SENTENCE

1. The accused is charged with one count of Grievous Harm contrary to section 226 of the Penal Code. The section says that; any person who unlawfully does grievous harm to another is guilty of a felony, and shall be liable to imprisonment for fourteen years.
2. The accused admitted this offence by pleading guilty to the charge when he was arraigned on the 21st of September 2021. The facts are agreed and tendered for consideration in this sentencing. On the basis of his own guilty plea, the accused is now convicted on the charge he is facing.
3. The issue is what would be the appropriate sentence to be imposed against the accused. In determining that, the Court will weigh and balance a number of factors. These include the facts of the offending, any aggravating factors – based on the circumstances of the offending and the character of the accused if any, any mitigating factors – from the circumstances of the offending itself and his character and personal circumstances and sentencing principles such as deterrence and rehabilitation, depending on which one is applicable in the circumstances of this case..
4. The relevant facts as agreed states that the incident occurred on 24th July 2021 at around 4am to 5am at 01 market area, White River, West Honiara.
5. The accused is a security officer of the Community Policing at White River Community and he was on duty on the date of incident.
6. The victim was playing card game known as 'pass' at a market stall beside the road while two of his friends were smoking and drinking alcohol waiting for him beside the road.
7. One of the accused's friends came and picked him up at 01 market on his car so that they could go to his residence at Papaho. The car turned and the light from its headlights shone onto the victim's friends who were standing beside the road.

8. One of the victim's friends threw a cigarette roll he was smoking on the bonnet of the car and swore at the accused saying 'you fuckem dad blo iu'.
9. Upon hearing this, the accused got out of the car and walked towards the victim's friends and asked them who swore at him and why they swore at him and his dad.
10. The victim heard the argument beside the road so he went out from the market stall to check what was going on. He then asked the accused and the accused told him that one of his friends swore at him and his dad.
11. The victim turned to his friends and asked them who swore at the accused and why they swore at him. The victim was standing with his friends trying to calm the situation while his friends advanced towards the accused.
12. The accused was very angry and eventually punched the victim's mouth, thinking that the victim might help his friends to fight with him. After the accused punched the victim, the victim and his friends escaped.
13. As a result of the punch, the victim's tooth #21 completely fell off at the scene and tooth #11, 12 and 22 were extracted at the National Referral Hospital.
14. The offending is characterized by uncontrolled anger on the part of the accused. The accused was sworn at. It was a bad swear to which the accused was very angry and could not control his temper. Self-control in such situation is important. Uncontrolled anger often lead to unlawful actions and serious consequences. This is what happened in this case. The accused has involved in Community Policing at White River as a security officer and should have exercised self-restraint even though he was provoked. He did not.
15. The facts indicate that act was a single punch however, it was applied with a substantial force and as a result, the victim's tooth #21 completely fell off at the scene and tooth #11, 12 and 22 were had to be removed at the National Referral Hospital. The victim had lost four of his teeth.
16. Punching another is unlawful action and is clearly a violent behavior which must be discouraged with the imposition of a sentence that aims at deterring not only the accused from further punching others in the future but also those who intend of harming others in similar manner in the future.
17. A custodial sentence is inevitable in this case.
18. The offending happened at night but it was a spur of the moment incident and not pre-planned. It cannot be said that it was committed under the cover of darkness. In the circumstances, I do not agree with the Crown's submission that the fact that it occurred at night should be regarded as aggravating the offending.

19. The accused had pleaded guilty to the charge at the earliest opportunity. It demonstrates remorse by the accused and his willingness to accept responsibility for his act.
20. I note that the accused is 21 years old. A young man who has a long life ahead of him. I believe that he is a good candidate for rehabilitation. Any imprisonment sentence that will be imposed on him will assist in rehabilitating him to stay away from this kind of action in the future. He is a first time offender.
21. Having taken into account the facts of the case, the aggravating features present and the need for deterrence, I am of the view that the appropriate starting point is 18 months imprisonment.
22. To reflect the plea of guilty and other mitigating factors present, six months will be deducted from the starting point.
23. The total effective sentence to be served in prison is 12 months imprisonment. The sentence is backdated to commence on when he was first remanded in custody.

