

Tama
18/10/2021
A.H.

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

Criminal Case No. 662 of 2021

REGINA

-v-

MARTIN OETA

Date of plea: October 13, 2021
Date of hearing: October 13, 2021
Date of sentence: October 18, 2021

*Lindsay Tamaika for the Crown
Bobby Harunari for the Defendant*

SENTENCE

- [1] The defendant, Mr. Martin Oeta, is charged with 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 has pleaded guilty upon arraignment, as such, a criminal conviction was thereby recorded against him. This is the reasons for his sentence.
- [2] The facts show that, on August 29, 2021, around 9:06 p.m. few hours into the lockdown, Sergeant John Bagira, who was manning the checkpoint at Rove area, opposite the bulk shop, sighted the defendant, Martin Oeta approaching the checkpoint. Upon his arrival at the checkpoint, the police officers arrested and transported him to Central Police Station, where he was placed at Central Police Station holding cell.
- [3] During the record of interview, the defendant admitted that he was attending a birthday party at one of his friends' residence at Tasahe area on Sunday 29, and was returning to his house when he was arrested at police checkpoint at Rove area.
- [4] The defendant was later dealt with and charged for breaching the lockdown orders.
- [5] The offence carries a maximum penalty of 15,000 penalty units or 5 years' imprisonment, or both. The maximum penalty has been accepted as demonstrating the seriousness of the offence. And it reflects our legislature's intention to strongly condemn and discourage such a behaviour that may possibly aid community transmission of covid-19, in the event of an outbreak. But, it is settled law that, cases are judged on their own merits and set of

facts, and no two cases are the same. The maximum sentence is only reserved for the worst type of offending.

- [6] Mr. Tamaika, of counsel appearing for the crown submitted the following as aggravating factors. First, the defendant deliberately flouted the law. He knew full-well that there was going to be a lockdown that evening, yet chose to leave his friend's house in hope of walking home that night.
- [7] He also submitted that the defendant was drunk at the time of arrest. However, I do not see this as an aggravating factor. There were no facts to demonstrate his intoxication as a catalyst to his actions or infuriates his conduct, rather he made a conscious decision to return home. His intoxication was done lawfully at a birthday party.
- [8] In support of his submission, counsel relied on few cases¹ of which the Magistrates' Court had imposed imprisonment terms. Thus, sought a 6 months' custodial term as a starting point.
- [9] Mr. Harunari of counsel for the defendant submitted that the lockdown was a mock exercise by the government to test the readiness and preparedness of our country, should there be any outbreak of Covid-19. He accepted that such practice is important to test how the country could respond effectively to any outbreak of the virus in the country. However, vehemently argued that the circumstance of offending in this case should not attract harsh penalties.
- [10] He further submitted that, while he understands the responsibility and obligation placed on the Government to find ways to protect each citizen from the Covid-19, given that this is a mock lockdown exercise and the fact that there was no record of any outbreak of covid-19 at the time of defendant's arrest, he submitted that a custodial term would be too harsh and unfair for the defendant.
- [11] I am grateful for the assistance rendered by both counsels' to provide case authorities, which would assist the court to reach a just sentence. The court was referred to the case of *R v Auga*² ("*Auga*"). In that case, the court had imposed a fine of \$300 on the defendant after a guilty plea. The facts were that, the defendant had went looking for cigarettes at Savo heights, and was not at his residence at Namoruka area, although he knew full well that it was during a lockdown period and the area of which he went was part of the Emergency Zone. He was a young person in his early 20's, and was working as a casual worker at Red Devil Company.

¹ R v Jack Dola [2021] SBMC Criminal Case No. 652 of 2021, R v Gee & Others [2021] SBMC Criminal Case No. 647 & 648 of 2021

² SBMC-Criminal Case No. 666 of 2021

- [12] In *R v Tela & Others*³ ("*Tela*"), the facts were that, the defendants had thought the area located at the far eastern end of the Henderson airport was beyond or outside of the Emergency Zone. They had pleaded guilty to a count of Restriction of Movement of Persons in Honiara. The court imposed a good behavior bond for a year in the sum of \$500.
- [13] In *R v GM*⁴ ("*GM*"), the court imposed a good behavior bond on the defendant for 1 year in the sum of \$500.00. The facts were that, the defendant had gone to his uncle's place the night before the lockdown, and because that it was late, he remained at his uncle's residence until Monday afternoon. He was arrested after being seen walking along Vava Creek main road, a place close to his residence and part of the Emergency Zone. He was a Juvenile at the time of offence, hence, the sentence of good behavior bond.
- [14] In *R v Iotoa & others*⁵ ("*Iotoa*"), the defendants' were fined \$300. They were walking along Tuvaruhu road, and were intending to return to their place of residence at Vavaya ridge. They had been drinking Kava with other relatives until late, and deliberately intended to breach the lockdown orders. The court had imposed the fine after considering their youthfulness and early guilty pleas.
- [15] In the case of *R v Dola*⁶ ("*Dola*"), the defendant pleaded guilty to a count of Restriction of Movement of Person in Honiara. The facts were that, the defendant had been sighted at about 11:00 p.m. on August 29, 2021, at Honiara Town Council Depot area, along the Mbokonavera road. The Court took into account that it was a deliberate act to flout the laws put down by the state during an Emergency period to prepare, guard and assess the preparedness of the country's inhabitants against any intrusion of Covid-19. The court imposed a sentence of 12 months' imprisonment.
- [16] Having outlined the above case authorities, it is obvious, that the tariff for this offence ranges from discharge without conviction, good behavior bonds, and fines to imprisonment of 12 months. The decision, of course, rest in the discretion of the court after weighing the merits and facts of each case.
- [17] In the case beforehand, the defendant was attending a birthday party on the evening, hours before the start of lockdown. He knew full-well of the looming lockdown, yet had chosen to remain at his friend's home till late. This is a foolish decision on his part. Although, his actions before the date of incident is not questionable, he should have taken the responsibility to return home before the lockdown starts. He deliberately chose to run into the law, which he did, and made himself appear before this court today for sentence.

³ SBMC-Criminal Case No. 657 of 2021

⁴ SBMC Criminal Case No. 667 of 2021

⁵ SBMC Criminal Case No. 659 of 2021

⁶ SBMC Criminal Case No. 652 of 2021

[18] It is accepted that he had few beers before the lockdown exercise. However, there was nothing to suggest that his intoxicated state was the cause of breach. There were no facts to state that his intoxicated state were infuriating, so as to hold it as an aggravating factor. It was his decision to remain at the party until late and to walk down to the police officers at bulk shop checkpoint that was unwise.

[19] The importance of this lockdown exercise was well enunciated in the case of *Tela*, in which the court had stated [At paragraphs 8 – 10]:

“...Of course, this exercise was made in view of the fact that, Solomon Islands do not have the vital facilities and necessary equipment to confront an outbreak or community transmission of COVID-19, including its improved ‘variants’. Our government is doing its best to protect and safeguard our country, to teach us of the risks and dangers that this disease entail, and what it would be like, if in the event it enters Solomon Islands. A clear example is India, and Fiji being our nearest neighbor, which as we understand have highly sophisticated equipment and facilities but could not stand the outbreak of ‘delta’ variant.”

“We need to be prepared, because sooner or later, our borders may need to open for other services to proceed, and to allow for other incoming travelers into our country. And this may pose risk for the virus to enter our country. I acknowledge that this is an exercise or mock, and there are no positive cases currently recorded in the country. However, as mentioned above, this is the way we can test our preparedness, taking due account to our citizen’s lack of adequate understanding of COVID-19 and its deadliness’. I agree, I must treat this matter different to a real lockdown, where there’s an actual outbreak with real risk.”

[20] Having assessed the circumstance of the offending, the deliberate breach of the lockdown orders, and weighing with the case authorities of this jurisdiction, I am of the opinion that a fine sentence is inevitable in this case. After considering the aggravating factor and mitigating factors in this case, I hereby impose the fine sentence as follows:

1. The defendant must pay the fine of **\$500.00**.
2. The fine must be paid by **1st of November 2021 at 4:30 p.m.**, considering the financial impacts and effects of covid-19.
3. In default of payment, 20 days’ imprisonment.
4. Criminal conviction entered.
5. 14 days right of appeal applies.
6. Order accordingly.

THE COURT

.....
MR. LEONARD B. CHITE
Principal Magistrate
Central Magistrates’ Court

