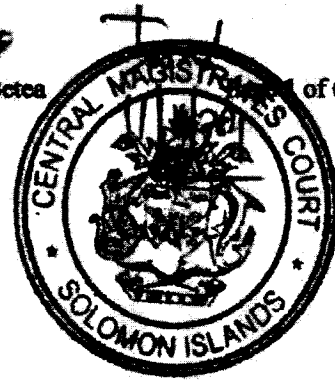


**IN THE CENTRAL MAGISTRATES' COURT)
OF SOLOMON ISLANDS AT HONIARA)
(Criminal Jurisdiction)**



Criminal Case No. 265 of 2021

REGINA

-v-

MICHAEL BETEA

Date of plea: November 2, 2021
Date of hearing: November 2, 2021
Date of sentence: November 11, 2021

Ms. Letiara Pellie for the Crown
Mr. Lazarus Waroka for the Defendant

SENTENCE

Introduction:

- [1]. The defendant is charged with an offence of Assault Causing Actual Bodily Harm contrary to section 245 of the Penal Code (Cap. 26). He was initially charged with Acts Intended to Cause Grievous Harm, but was later reduced after the defence's proposal for plea bargain was accepted. Upon being arraigned on the reduced charged, the defendant pleaded guilty. As such, a criminal conviction was thereby entered. I shall now proceed to divulge my reasoning.

Brief summary of facts:

- [2]. On April 23, 2021, at about 1:00 a.m., the defendant met the victim at 01 White River, Market area. He made some threatening remarks towards the victim, as a result, an argument erupted. Thereafter, the victim walked away from him, and went and played 'pass' (a type of card game) at a nearby table.
- [3]. After some time, the victim decided to return home. Thus, he walked over to his car, which was parked near Mary Gwaina's market table. At that time, the defendant was standing next to the market table. The victim came to Mrs. Gwaina's table, and bought

few betelnuts. At this point, the defendant saw the victim, and grabbed him. He attempted to attack him with a kitchen knife, but, the victim quickly defended the knife with his right hand. As a result, he sustained laceration of approximately 4cm x 1cm in length and 2 cm deep to his right medial wrist and abrasion to his front neck.

- [4]. The bylaw securities who were on duty that night, intervened and called the White River Police. The defendant was later arrested, charged, and participated in a record of interview.
- [5]. The victim was taken to the National Referral Hospital for medical treatment.

Maximum prescribed penalty:

- [6]. The offence of Assault Causing Actual Bodily Harm, under s. 245 carries a maximum penalty of 5 years imprisonment. The maximum term describes our legislature's abhorrent, intense dislike, and disapproval to such offending. Nonetheless, it is trite law that cases are decided on their own set of facts, and the maximum term is set aside for the worst type of offending.

Aggravating factors:

- [6]. Having perused the facts, I find the following to be the aggravating factors in his case:
 - 6.1. **Use of dangerous weapon** – The defendant used a kitchen knife to assault the victim with. There are no medical report to explain the extent of injury. However, the agreed facts revealed that it was about 4cm x 1cm in length, and 2cm deep to the victim's right medial wrist, and abrasion to his front neck.
 - 6.2. **Intoxicated during the commission of offence** – the defendant was drunk when he committed the offence. It appears that he used the alcohol as a catalyst to ignite the grudge in him to attack the victim. I see this as a premeditated thought on his part as well.

6.3. **The offence was committed at night** – The offending occurred in the early hours of the morning at about 1:00 a.m., which was still dark. This puts the victim in a more dangerous and risky position to defend himself.

Case Authorities:

- [7]. In *R v Peter*¹ ("*Peter*"), the accused was sentenced to 5 months' imprisonment following his guilty plea to the offence of Assault Causing Actual Bodily Harm. The facts were that the accused was arguing with his girlfriend when the victim met them and told the accused not to do any assault on the girlfriend as it would constitute domestic violence should police arrest him. The accused then swore at the victim, approached and punched her. She fell and while she was on the ground he repeatedly kicked her. The victim was a female and an unprovoked act on an innocent victim who tries to give some positive and constructive advice to the accused.
- [8]. In case of *R v Panio*² ("*Panio*"), the accused was sentenced to 26 months' imprisonment after he pleaded guilty to the offence of assault causing actual bodily harm. The victim was simply minding his own business when he saw the accused get out of a vehicle with a bush knife and approached him. The accused without saying any word slash the bush knife towards the victim, luckily the victim stepped back and the knife missed him. While the victim was on the ground, the accused moved over and punched him several times on his facial area. The victim was transported to Tingoa Health Centre for medical treatment.
- [9]. In *R v Lianga*³ ("*Lianga*") the accused was sentenced to 2 years and 11 months' imprisonment after he pleaded guilty to the offence of assault causing actual bodily harm. The victim was his own 3 year old son. He was enraged after his son innocuously uprooted his marijuana plants. He slapped the victim's head and after some moment wasn't satisfied, so he went back and kicked the victim on the thigh, which he suffered a fractured thigh bone. The medical report showed that the femoral fractures are prone to concealed haemorrhage which might be a significant threat to life.

¹ [2018] SBMC 208

² [2016] SBMC 4

³ WDMC-CRC 185 of 2018

- [10]. In *R v Chacia*⁴ ("*Chacia*") the accused was sentenced to 18 months after he pleaded guilty to the offence of assault causing actual bodily harm. That sentence was confirmed on appeal by the Court of Appeal. In this case, the accused viciously assaulted the victim (a 65 year old woman) to her mouth, breast, shoulder, rib and back before he raped her that same night. No weapon was used. The trial Court described that attack as "outrageous".
- [11]. Having compared the above authorities to the one at hand, it is clear that this case falls below that of *Panio*, but above *Peter*. The other cases are much serious.
- [12]. There was a kitchen knife being used by the accused person to assault the victim. It was so fortunate that the victim defended himself out of what may have turned out serious. The extent of injury is less serious, measuring around 4cm x 1cm in length, and 2 cm deep. It was also unclear from facts, whether the victim has suffered lasting condition from the injury. Thus, I accept that the victim had completely recovered from the injury. The injury was done on the wrist, which is not a vulnerable part, compared to if it was on the head.

Starting point:

- [13]. Having considered the accused level of culpability, and the extent of injuries described in the agreed facts, I take a starting point of 10 months imprisonment. I add 4 months to consider the aggravating factors. As such, the head sentence is increased to 14 months imprisonment.

Sentencing remarks:

- [7]. The defendant must realize that, alcohol and violence will only bring problems and troubles for him and his family. While there may be others who would argue for the pleasures that alcohol has, those are temporary. But, the damage that follows may last his lifetime, if he do not consider adjustment or change.
- [8]. He must appreciate that he is a Father to his children, and a husband to his dear wife; a blessing that many begged to have. What he did on the date of offence has undoubtedly

⁴HCSI-CRC 95 of 2012

brought shame, humiliation, and sadness to his family. No family would want quarrelling, row, and troubles. He ought to redirect his mindset, in acknowledging that all family yearns for peace, stability and harmony.

- [9]. His wife has been faithfully attending his hearings until this day, which proves her love for him, and the significance of his absence at home. The need for him to refrain from violence and alcohol cannot be overemphasised. The bible speaks of alcohol being a substance akin to snake's poison: "Do not let alcohol, or beer, tempt you, even though it is attractive in its appearance, and goes down smoothly. The next morning you will feel as if you had been bitten by a poisonous snake." (Proverbs 23:29-33).
- [10]. Finally, the defendant needs to accept that all human beings aged daily. The clock is ticking, and I would like to think that it is time for him to make a change for better.

Mitigating factors:

- [14]. I take due account to the following factors as mitigation:

14.1. **Guilty plea & remorse** – He entered an unequivocal guilty plea to the charge against him. I shall give full discount available in the case of *R v Qoloni* that is 25 % discount. Clearly it shows that he has owned up to his wrongs and accepted the consequences. His guilty pleas shows remorse and saves courts time and resource to run a full trial.

14.2. **No previous conviction** – He shall be treated as a first offender, although the number of previous convictions. These convictions have been discarded, because they were committed more than ten years ago. I can safely regard them as being decayed, thus, treat him as having no prior convictions.

Sentencing consideration:

- [15]. I hereby reduce 4 months to consider his guilty plea, which saves the court's time and expense. I further deduct 2 months to consider the fact that he has no prior conviction, and the payment of compensation of \$300.00, to the victim. Therefore, the resulting sentence is, 8 months' imprisonment.
- [16]. I shall discard the application for suspension of imprisonment under s. 44 of the Penal Code, on the premise that s.44(2) of *Act*, prohibits the application in cases involving use of a weapon, like in this case,

Sentencing Order:

[17]. I hereby order that the defendant, Mr. Michael Betea, shall be sentenced as follows:

1. The defendant shall be imprisoned at the Rove Correctional centre, Honiara for a period of 8 months imprisonment.
2. The sentence to commence from date of first remand.
3. I noted that he has been in custody since April 24, 2021. Thus, have served the substantial time on remand. Consequently, I further order that he be released at the rising of the Court.
4. 14 days right of appeal applies.
5. Order accordingly.

