



IN THE CENTRAL MAGISTRATES COURT OF SOLOMON ISLANDS AT HONIARA

(Criminal Jurisdiction)

Criminal Case No: 907 of 2021

REGINA

-V-

JACKSON IRO

THOMAS ALE

PRESIDING MAGISTRATE: HOLLISON F (PRINCIPAL MAGISTRATE)

Appearances:

Mr Jonathan Auga, Senior Legal Officer, Office of the Director of Public Prosecutions for the Crown

Ms Rochelle Palmer, Senior Legal Officer, Public Solicitors Office for the defendant

Date of Sentence: 9th December 2021

Notice: This copy of the Court's Reasons for Judgment/Sentence is subject to formal revision prior to publication.

SENTENCE

INTRODUCTION

1. The defendants Mr Jackson Iro and Thomas Ale are charged together with one count of Behaving in a Riotous Manner contrary to section 175(d) and section 21 (a) of the *Penal Code* [Cap 26].
2. They pleaded guilty to the said offence and I now record a conviction against each of them.

SUMMARY OF FACTS

3. The defendants' names are provided above. Mr Iro is 21 years of age and a native of Fataleka and Kwaraae in the Malaita Province. Mr Ale is from the Western and Malaita Provinces and he is 19 years of age.
4. On the 24th November 2021, the officers of the Police Response Team (PRT) were on Patrol at Kukum area in Central Honiara. The team was led by Inspector Kerry Siriheti and Sergeant Stanley Waita.

5. At about 1:30pm, the team responded to a report of a gathering at the Kukum area along the Florence Young School road. When the team arrived at the Kukum area one of the police officer dispensed a tear gas towards the crowd who were gathered there. The Crowd of people were breaking into the shops and looting goods from the shops along the Kukum road.
6. At the scene, Sergeant Waita and Inspector Siriheti left their police vehicle and rushed towards the crowd and grabbed the two defendants as the people were running away from the tear gas. The two officers moved towards a shop that was looted and arrested the defendants inside the shop.
7. They escorted the two defendants back to the police vehicle and they were transported to the Central Police Station in Honiara.

RELEVANT FACTORS FOR CONSIDERATION

Sentencing Principles

8. The sentencing principles such as deterrence, punishment and retribution must always be considered to guide the court to reach a just and appropriate sentence.

Aggravating Factors

9. The Aggravating factors in this case are as follows:

Maximum Penalty.

10. The maximum Penalty for this present offence is 2 months' imprisonment or a fine of SBD 600 or both.

Nature and Seriousness of the offence

9. The offending added to the destruction and devastation of considerable number of buildings and business houses mainly the Chinatown district, Kukum and Burns creek area in east Honiara.
10. The estimated loss is more than SBD 200 million at the minimum and this amount is expected to increase as the Central Bank of Solomon Islands (CBSI) is still in the process of collating data from the businesses, companies and individuals who were affected.
11. The actions of the defendants cannot and should not be considered in isolation and the totality of the events rendered this case a very serious one.

12. In *Igi v Regina* [1997] SBHC 39; HC-CRAC 047 of 1996 (23 July 1997)¹, his Lordship Justice Palmer, as he then was, stated as follows:

The second ground raised was that the extent of the damage had been done by several other hundreds of people who had never been identified. In other words that the court should have regarded the individual acts of these Appellants as if they had been committed in isolation; such as damaging sign boards, pulling up goal posts and tearing the goal nets, throwing stones at the buildings or kicking the boxes at the grand stand.

With respect however, the approach taken by Courts on this is to the contrary. In R. v. Caird (1970) 54 Cr. App. R. 499, per judgment of Sachs L.J., referred to by the learned Director of Public Prosecutions, his Lordship made the following pertinent statement:

"Any participation whatever, irrespective of its precise form, in an unlawful or riotous assembly of this type derives its gravity from becoming one of those who, by weight of numbers, pursued a common and unlawful purpose. The law of this country has always leant heavily against those who, to attain such a purpose, use the threat that lies in the power of numbers.

... In the view of this Court, it is a wholly wrong approach to take the acts of any individual participator in isolation. They were not committed in isolation and, as already indicated, it is that very fact that constitutes the gravity of the offence."

Group Offending

13. The fact that these defendants were caught at or inside the shop shows that they were at the scene of the crime in which they were implicated for the present offence. I take judicial notice of the fact that most of the business owners who were affected fled for their lives leaving their shops only to be looted and burnt in most cases.

Discourage Investors

14. The recent November Honiara riots will certainly discourage foreign investors to come and invest in our country, and exacerbated by the Covid-19 and other factors. The publicity that the recent Honiara riots received by the mainstream and international media portrayed a negative impression of the economic climate in the country which is sadly accurate.

Mitigating factors

15. The mitigating factors include the following: early guilty plea and remorse, first offender, cooperation with the Police and the defendants' personal circumstances.

¹ *Igi v Regina* [1997] SBHC 39; HC-CRAC 047 of 1996 (23 July 1997).

COMPARATIVE SENTENCES

Section 175 (d) of the Penal Code

16. There are many case authorities for this particular offence and the sentencing options are custodial sentences, non-custodial sentences, penalty fines, good behavior bond and so forth.

Starting Point

17. As I have said, the maximum sentence is only 2 months imprisonment or SBD 600 dollars fine. There are aggravating features in this case as discussed, hence, I am of the view that an immediate custodial sentence is inevitably warranted.
18. I am of the view that a starting point of 2 months imprisonment is appropriate for both defendants.
19. I note the mitigating factors of both defendants such as early guilty plea, remorse, first-time offender, and their respective personal circumstances and I deduct 1 month from the starting point to reflect all the mitigating factors.
20. Thus, I am satisfied that 1 month imprisonment is appropriate for each of the defendants in this present case.
21. Having said that and after balancing the sentencing principles such as punishment, deterrence, and rehabilitation, I now sentence Mr Jackson Iro and Thomas Ale to 1 month imprisonment and a good behavior bond of \$300.00 for a period of 24 months respectively for one count of Behaving in a Riotous Manner contrary to section 175(d) and section 21 (a) of the *Penal Code* [Cap 26].
22. I wish to add that whilst I agree that the magnitude of the present case is extremely serious and should have attracted a harsher sentence than this, my hands are tied and the court cannot go beyond the maximum sentence of 2 months' imprisonment being the maximum sentence under section 175(d) of the *Penal Code* [Cap 26]. It must be made clear that the decision to lay a charge under any provision of the law or legislation is the constitutional duty of the Director of Public Prosecutions (DPP) as per her powers under the *Constitution of Solomon Islands*.² The three defendants in the case of *Igi* referred to above were charged for various offences such as taking part in a riot and riotously causing injury to buildings under sections 70 and 76 of the *Penal Code* which have higher maximum sentences than section 175(d) of the *Penal Code* [Cap 26] which is the subject of this present case.

² *Constitution of Solomon Islands*, s 91

23. I hope these defendants learn from their mistakes and refrain from committing further offences in the future.

ORDERS

24. The defendants are sentenced as follows:

- [1] Mr Jackson Iro is sentenced to one (1) month imprisonment and a good behavior bond in the sum of \$300.00 for a period of 24 months for one count of Behaving in a Riotous Manner contrary to section 175(d) and section 21 (a) of the *Penal Code* [Cap 26].
- [2] Thomas Ale is sentenced to one (1) month imprisonment and a good behavior bond in the sum of \$300.00 for a period of 24 months for one count of Behaving in a Riotous Manner contrary to section 175(d) and section 21 (a) of the *Penal Code* [Cap 26].
- [3] Pre-Sentence-Custody. The respective sentences must be backdated or retrospectively commenced on the date of first arrest that is the 24th of November 2021.
- [4] Right of Appeal applies-within 14 days.
- [5] The court so orders.

PRINCIPAL MAGISTRATE JELIX HOLLISON

