

IN THE CENTRAL MAGISTRATES COURT OF SOLOMON ISLANDS

AT HONIARA

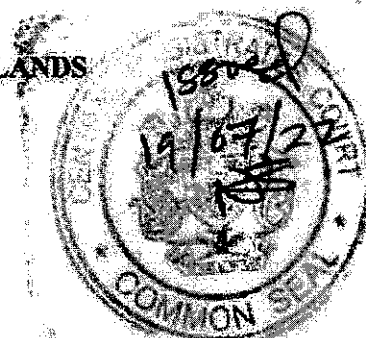
(Criminal Jurisdiction)

Criminal Case No: 814 of 2021

REGINA

-v-

JIMMY MAU



Coram: HOLLISON F (PRINCIPAL MAGISTRATE)

Appearances:

Mr Abel Maelanga, Police Prosecutions Department, for the Crown

Ms Rochelle Palmer, Senior Legal Officer, for the Public Solicitors Office (PSO)

Date of Sentencing: 19th July 2022.

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

SENTENCE

INTRODUCTION

1. The defendant Mr Jimmy Mau (defendant) is charged with one count of Simple Larceny contrary to section 261(1) of the *Penal Code* [Cap 26], and one count of Resisting Arrest and escape contrary to section 125 of the *Penal Code* [Cap 26].
2. He pleaded guilty to the said offences. I now convict him accordingly.

AGREED FACTS

Count 1: Simple Larceny

3. The complainant in the first count of simple larceny is Samson Lovee (complainant) of Tenaputi village, Central Guadalcanal, Guadalcanal Province.
4. The defendant's name is provided above and he is from Talakali village, Langalanga Lagoon in the Malaita Province who resides with his parents at Mbokona area in Honiara. He was 19 years old at the time of commission of the offence.

19. At the rising of the court on that day, the court adjourned and the defendant was escorted out from the court room to wait for his warrant to be prepared by the court clerks.
20. Whilst waiting for the warrant to be prepared, the defendant sneaked out quietly from the officers and ran towards the eastern gate of the Magistrates Court facing the main road.
21. The defendant ran quickly across the road towards the Bulk Shop besides the Wesley United Kindergarten School and took the direction to Mamanā Water area in between several market stalls along the road.
22. The complainant with the help of two NCID police officers ran after the defendant shouting for assistance but they did not manage to recapture the defendant.
23. The complainant returned to the Honiara Magistrates Court and boarded their vehicle back to the Central Police Station where he disseminated information to his superiors of what had happened. He then lodged his formal complaint against the defendant.
24. The defendant evaded police until he was rearrested again on the 27th December 2021 at the Central Main Market and was detained at the Central Watch House.
25. The defendant was interviewed by Police investigators on the 3rd January 2022 for the allegation of escaping from lawful custody. In his record of interview, he made voluntary admission to the allegation held against him.

DISCUSSION AND ANALYSIS

SENTENCING PRINCIPLES

26. In sentencing, the classic principles such as punishment, deterrence and rehabilitation must always be considered.

FACTORS CONSIDERED

Maximum Sentences:

Simple Larceny

27. Section 261(1) of the *Penal Code* [Cap 26]¹ states as follows:

¹ *Penal Code* [Cap 26], s 261(1)

be suspended for two years on the basis that the property stolen was recovered and given back to the owner.

35. In *Regina v Luimalefo* [2017] SBMC 46; Criminal Case 958 of 2017 (26 September 2017)⁴, the defendants pleaded guilty to one count of Simple Larceny contrary to section 261(1) of the *Penal Code* [Cap 26]. Mr David Junior Malefo was sentenced to an imprisonment term of 1 ½ years' imprisonment whilst Mr Tome Gagame Junior was sentenced to an imprisonment term of 2 years. The basic facts of that case were that on the 11th of September 2017, the defendants stole the following items which were owned by an expatriate business man Mr Jonathan Pestana: SBD10, 000 and USD 5,000 that the victim left in his car parked behind his shop at the Kukuni Highway in Honiara.

36. In *Regina v Ilala* [2017] SBMC 18; CMC-CRC 325 of 2015 (14 June 2017)⁵; the defendant was sentenced to 12 months of imprisonment for one count of Simple Larceny contrary to section 261(1) of the *Penal Code* [Cap 26]. The defendant was also sentenced for other offences.

37. In *Regina v Kemakeza* [2008] SBHC 41; HCSI-CRC 467 of 2007 (3 September 2008)⁶, the defendant was sentenced to 18 months imprisonment term for one count of Simple Larceny contrary to section 261(1) of the *Penal Code* [Cap 26]. Mr Kemakeza was also sentenced for other offences which were ordered to be served concurrently with the simple larceny charge.

38. The sentences for simple larceny in this jurisdiction range from a good behavior bond, penalty fine, suspended and custodial sentences.⁷ I agree with the defence counsel that this case is less serious than the *Eapa case* and should receive a lesser sentence. However, in *Eapa v Regina*⁸ the defendant voluntarily returned the property as opposed to this present case where the properties were recovered when the owners of the property pursued the defendant.

Starting Point

39. After having considered the aggravating factors and the relevant circumstances of the present case as alluded to above, I am of the view that a starting point of 16 months' imprisonment is appropriate.

⁴ *Regina v Luimalefo* [2017] SBMC 46; Criminal Case 958 of 2017 (26 September 2017)

⁵ *Regina v Ilala* [2017] SBMC 18; CMC-CRC 325 of 2015 (14 June 2017);

⁶ *Regina v Kemakeza* [2008] SBHC 41; HCSI-CRC 467 of 2007 (3 September 2008)

⁷ *Regina v Kemakeza* [2008] SBHC 41; HCSI-CRC 467 of 2007 (3 September 2008); *Eapa v Regina* [2001] SBHC 77; HC-CRC 248 of 2001 (2 November 2001)

⁸ *Eapa v Regina* [2001] SBHC 77; HC-CRC 248 of 2001 (2 November 2001)

48. It took almost a week to re-arrest him. Resources have been expended to arrest him.

49. The circumstances surrounding the second count warrant an immediate custodial sentence.

Starting Point

50. I am of the view that a starting point of 16 months' imprisonment should be appropriate for the second count.

51. I take into account his early plea, remorse, cooperation with the police (to some extent), and his personal circumstances as discussed above. I deduct 10 months from the starting point to reflect all the mitigating factors.

52. This gives a resulting sentence of 6 months' imprisonment.

Consecutive sentences.

53. These two offences arose from different transactions and must be served consecutively. This gives a resulting sentence of 12 months' imprisonment.¹²

Totality Principle.

54. I have considered the totality principle and I do not think this combined sentence is excessively harsh.

55. I also refuse to exercise my discretion to suspend any portion of the total sentence because he is a repeated offender, he spent almost a week out in the community even though he had been lawfully remanded, and the properties stolen in the first count were not voluntarily returned as in *Eapa*.¹³

CONCLUSION:

56. Theft and other burglary offences are increasing especially in Honiara at an awfully disturbing rate. It had reached a stage where peoples properties are no longer safe at homes, offices, or in vehicles, or while carrying them along the roads.

57. This present case is one of the many occurrences of stealing in broad daylight at the Central Market in our capital city and a perfect example of some of the youths who roamed the streets looking for victims to prey on. It is an indication of societal decay which must be addressed

¹² *Bade v Reginum* [1988] SBHC 10; [1988-1989] SILR 121 (21 December 1988)

¹³ *Eapa v Reginum* [2001] SBHC 77; HC-CRC 248 of 2001 (2 November 2001)