



**IN THE CENTRAL MAGISTRATES COURT OF SOLOMON ISLANDS
AT HONIARA**

(Criminal Jurisdiction)

Criminal Case No: 330 of 2022

REGINA

-V-

JAMES MOKA

Coram: HOLLISON F (PRINCIPAL MAGISTRATE)

Appearances:

Mr Joses Manehage, Police Prosecutions, appearing on instructions of the Office of the Director of Public Prosecutions

Mr Paul None, Senior Legal Officer, Public Solicitors Office for the Defendant

Date of Sentencing: 29th August 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 James Moka is charged with one count of Criminal Trespass contrary to section 189(2) of the *Penal Code* [Cap 26].

2. The defendant pleaded guilty to the said charge and I hereby convict him based on the plea entered.

FACTS

3. I take note of the agreed facts. Due to want of time, I will not read them this morning.

DISCUSSION AND ANALYSIS

SENTENCING PRINCIPLES

4. The sentencing principles such as punishment, deterrence and rehabilitation must be considered by the courts in formulating any sentence.

AGGRAVATING FACTORS

5. The aggravating factors are as follows:
6. The maximum sentence of 12 months imprisonment shows that it is quite a serious offence.
7. The offence of criminal trespass is an offence that has a close relationship with the constitutional rights to protection of property, privacy and the other common law rights.
8. The offence was committed at night. He disturbed the occupants of the house by calling them repeatedly that night.
9. The occupants are mostly women so it would be normal for them to feel threatened when an adult male keep calling them in the night.

STARTING POINT

10. The sentencing options for the offence of criminal trespass in this jurisdiction include the following: bound-over sentences, penalty fines, suspended sentences and custodial sentences. Each case, however, must be decided according to its own facts and merits.
 11. After taking into account the circumstances of the case, I am of the view that the starting point of 3 months imprisonment is appropriate.
 12. The mitigating factors are as follows:
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13. **Early Guilty plea and remorse.** The defendant entered an early guilty plea which is normally a sign of remorse. This saves the court's time and resources of having to conduct a trial in this case.
 14. Mr Moka is not a first time offender. However, he cooperated with the police.
 15. **Personal circumstances.** I take note of his personal circumstances as a father and parent. He is a middle aged person or adult. Despite the fact that he has several past convictions, as a human, I think he can still change.
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16. I take note of all the mitigating factors and I deduct 2 months from the starting point of 3 months and the resulting sentence is only a (1) month imprisonment.

CONCLUSION

17. Criminal trespass is one of the offences that protects people and home owners from invasion by any person. This offence has a nexus to the constitutional rights such as the protection of property and privacy.¹

18. Having said that, I sentence now sentence the defendant Mr Moka to one (1) month imprisonment for one count of Criminal Trespass contrary to section 189(2) of the *Penal Code* [Cap 26].

19. The sentence should serve as a personal deterrence to the offender and also the general public that anyone who commits the offence of criminal trespass is punishable either by way of a penalty fine or imprisonment.

ORDERS

20. The orders of the Court are as follows:

[1] The offender Mr Moka is sentenced to one (1) month imprisonment for one count of Criminal Trespass contrary to section 189(2) of the *Penal Code* [Cap 26].

[2] Time spent in custody, if any, should be deducted.

[3] Right of Appeal within 14 days.

[4] The court so orders.


PRINCIPAL MAGISTRATE FELIX HOLLISON
THE COURT



¹ *Constitution of Solomon Islands 1978*, s 8 and s 9