

IN THE CENTRAL MAGISTRATES COURT OF SOLOMON ISLANDS

AT HONIARA

(Criminal Jurisdiction)

Criminal Case No: 954 of 2021

REGINA

-V-

BRUNO JUNIOR SEPO TODONGA

JEDIDIAH KAUA

ALLAN QURUSU

JENNY ELLEN DAVID MABE

CORAM: HOLLISON F (PRINCIPAL MAGISTRATE)

Appearances:

Ms Marela Claven Senior Legal Officer, for the Crown (DPP)

Mr None for the defendant Mr Todonga

Date of Sentence: 6th January 2022

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

SENTENCE

INTRODUCTION

1. The defendants Bruno Junior Sepo Todonga, Jedidiah Kaua, Allan Qurusu and Jenny Ellen David Mabe are charged with one count of *Restriction of Movement of Persons in Honiara: contrary to Regulation 5(1), (2) (a) and (b); and 9(1) of the Preservation of Public Security Regulations 2021 and section 3 of the Preservation of Public Security Act [Cap 27] and 21(a) of the Penal Code [Cap 26].*
2. The three others namely Jedidiah Kaua, Allan Qurusu and Jenny Ellen David Mabe had been sentenced on the 17th December 2021 to a penalty fine of SBD 2000 each which was due on the 28th December 2021. However, due to the various public holidays which are considered



excluded days as per section 55 of the *Interpretation and General Provisions Act* [Cap 85]¹, the other defendants were allowed to pay their fine by the first week of January 2022.

3. Mr Todonga recently came to court and pleaded guilty. He was remanded two days ago for not giving a valid and satisfactory explanation as to why he did not comply with the police bail conditions for him to appear in court on a date in December 2021.
4. I will now proceed to sentence him.

FACTS

5. The facts can be summarized as follows.
6. The defendant is 23 years old from Ghombua village in the Guadalcanal Province. He is a resident of Mbokona Vera 1 area in Honiara.
7. On the 25th November 2021, His Excellency, Sir David Vunagi, Governor General of Solomon Islands declared a lockdown on the basis that it was necessary for the preservation of Public Security to do so, under section 3 of the *Preservation of Public Safety Act* [Cap 27].
8. On the 26th November 2021, the Governor-General declared a curfew on the basis that it was necessary for the preservation of public security to do so, under section 3 of the *Preservation of Public Security Act* [Cap 27].
9. The curfew was in force between the hours of 7:00pm and 6:00am from the 26th November to the 10th December 2021.
10. On the 4th of December 2021 at about 0049 hours or 12:49am, the defendant was not at his place of residence at Mbokonavera 1 but was seen together with Jedidiah Kauga, Allan Qurusu, and Jenny Ellen David Mabe travelling in a white 2 tonne truck with the registration number MB 9450 along the Honiara City Council roundabout, an area designated as an emergency zone during the restriction period without any lawful excuse.
11. The defendant was driving the said vehicle at the time and he was intoxicated.
12. The defendant was apprehended and escorted to the Central Police Station where he was dealt with.

¹ *Interpretation and General Provisions Act* [Cap 26], s 55

DISCUSSION AND ANALYSIS

13. The classic sentencing principles are punishment, retribution, deterrence and rehabilitation.
14. The starting point is that this present case must generally be treated as more serious than the trial lockdowns and curfews because the relevant regulations were in place to contain the lawlessness within our nation's capital from the 24 to 27 November 2021.
15. Section 3 of the *Preservation of Public Security Act* [Cap 27]² provides as follows:

3.—(1) If at any time the Governor-General is satisfied that it is necessary for the preservation of public security so to do, he may by notice declare that the provisions of subsections (3) and (4) shall come into operation and thereupon those provisions shall come into operation accordingly; and they shall continue in operation until the Governor-General by further notice directs that they shall cease to have effect, whereupon they shall cease to have effect except as respects things previously done or omitted to be done.

16. Section 5 of the *Preservation of Public Security Regulations (No. 2) 2021* states as follows:³

Restriction of movement of persons

(1) A person must not enter or leave the emergency zone between the hours of 7.00 pm and 6.00 am.

(2) A person in the emergency zone must:

(a) be at the person's place of residence, and remain there, between the hours of 7.00 pm and 6.00 am; and

(b) not leave or be away from the person's place of residence, between the hours of 7.00 pm and 6.00 am.

(3) Subregulation (1) or (2) does not apply if a person:

(a) enters or leaves the emergency zone, or leaves his or her place of residence, 1072

because of a matter of urgency; or

(b) is exempted from complying with this Order under regulation 6; or

(c) is exempted in writing from complying with this Order by the Commissioner of Police.

17. Regulation 9 of the *Preservation of Public Security Regulations (No. 2) 2021* states as follows:

(1) A person who contravenes regulation 5 commits an offence.

Maximum penalty: 10,000 penalty units or 5 years' imprisonment, or both.

² *Penal Code* [Cap 26], s 308

³ *Preservation of Public Security Regulations (No. 2) 2021 (Legal Notice No. 334) dated Friday 26th November 2021*

Aggravating Factors

18. **Maximum Sentence.** The maximum sentence of 5 years or SBD 10, 000 or both shows that this is quite a serious offence.
19. **Circumstances of the offending.** The regulations were made for the preservation of public safety in Honiara because of the riots, burning and looting of shops and other private businesses between the 24 to 27th of November 2021. Three people also died during the course of the riots. This present offence occurred at least a week later after the said events.
20. **Influence of alcohol and responsibility of the driver.** The defendant was under the influence of alcohol at the material time and this is very serious especially because he was the driver of the vehicle. Driving under the influence of alcohol aggravated his offending compared to his three other co-defendants who were his passengers.

Mitigating factors.

21. The mitigating factors include the following: early plea and remorse, first offender/no previous conviction, cooperation with the police and his personal circumstances.

Starting Point

22. I note that the defendants were arrested at the Honiara City Council roundabout at least a week after the riots that occurred between the 24 and 26 of November 2021.
25. After having considered all the relevant factors, I am of the view that this case should be considered as falling towards the lower end of the spectrum in terms of its severity, hence, I am satisfied that a penalty fine is appropriate for the present case.
26. I note that he entered an early guilty plea which is a sign of remorse, he is a first offender, he cooperated well with the police although he did not comply with the bail conditions later, and his personal circumstances. He is still a young adult and has high prospects of rehabilitation.
27. I remind myself of the sentence that I have imposed for the others and since they were charged together under section 21(a) of the *Penal Code* [Cap 26], which means consistency and parity should be considered.

28. Thus, after having considered the relevant factors, I am satisfied that he should receive the same sentence that his three co-defendants had received.

CONCLUSION

29. In view of the above, I now sentence Mr Todonga and order him to pay a penalty fine of SBD 2000. Noting the comments under paragraph 20 herein, I will give him minimal but reasonable time to pay up his fine. The fine is due by the 7th of January 2022 at 4:30pm.

30. In the event that he fails to pay his fine, he shall be imprisoned for 3 months.

31. I hereby order that he be released from custody so that he can be able to pay up his fine.

32. I hope that he learns from his mistake and not to commit any offence in the future. This should also send a deterrent message to the public that adherence to our laws is important and the failure to do so has consequences.

ORDERS

33. The orders of the court are as follows:

[1] The defendant Mr Todonga is sentenced and ordered to pay a fine of SBD 2000 for one count of *Restriction of Movement of Persons in Honiara: contrary to Regulation 5(1), (2) (a) and (b); and 9(1) of the Preservation of Public Security Regulations 2021 and section 3 of the Preservation of Public Security Act [Cap 27] and 21(a) of the Penal Code [Cap 26].*

[2] In the event that he fails to pay up his fine by tomorrow at 4:30pm, he shall be imprisoned for 3 months.

[3] Direct that he be released from custody immediately.

[4] Right of Appeal-within 14 days.

[5] The court so orders.

