

**IN THE CENTRAL MAGISTRATE COURT
IN THE SOLOMON ISLANDS**



In the Criminal Jurisdiction

**BETWEEN: REGINA
AND: JUSTIN PAPABATU**

Before: Michael Fagani

Mr. Pitasua. E for Prosecution

Mr. Kwalai. D for Defence

Date of sentencing and mitigation: 26th of August 2022

Date of sentence: 31st of August 2022

SENTENCE

Introduction

1. The defendant Mr. Justine Papabatu is charged with one count of Affray and upon being arraigned, he had entered a guilty plea. Today the defendant appears before me for sentencing.

Facts

2. The facts before me shows that on the 9th of April 2022, the defendant saw the complainant at White River, he approached him and asked him if he was the person who broke into his house. The complainant replied and asked if the defendant wants to fight. The defendant and the complainant then swung at each other. Finally, the complainant managed to hit the defendant's left side face with his right fist and the defendant then hit the complainant's mouth. Both were brought to White River Police Station and the defendant was arrested and charged with one count of affray contrary to section 87 of the Penal Code.

Maximum Penalty

3. The maximum penalty for the offence of affray contrary to section 87 of the Penal Code is 1-year imprisonment¹. It is a trite law that the maximum penalty is reserved for worst type of offending and each case must be dealt with its own set of facts.

Aggravating factors

4. The aggravating factors which can be seen in this case is as follows:
 - 4.1 The maximum penalty of the offence of affray is serious. The offence carries a maximum penalty of 1-year imprisonment. This echoes the offence of affray or fighting in public place is a serious offence once committed.
 - 4.2 The offence was committed in a public place. Children or women might see the fighting between the defendant and complainant. That can bring fear and danger on them.
 - 4.3 Instigator of the offence. The Court noted from the facts that the defendant approached the complainant first and asked him if he was the one who broke into his house. As a result, they ended up fighting. Should the defendant report the matter straight away to the police, nothing should ever happen like this.

Prosecution Submission

5. In terms of sentencing submission, Mr. Pitasua for prosecution in his oral submission submit for the Court to impose a sentence that reflects the offence committed by the defendant. He further submits that the offence was committed in a public place and the defendant was the instigator therefore, any sentence imposed must reflect what had happened.

Defence Submission

6. Mr. Kwai submit that a fine pursuant to section 24(3) of the Penal Code² or a sentence pursuant to section 35 of the Penal Code is the appropriate sentence. Defence submit if the Court can dismiss the charge either absolutely or conditionally without conviction being entered against the defendant.

7. Section 35 of the Penal Code states that;

"Where, in any trial, the court thinks that the charge against the accused person is proved but is of opinion that, having regard to the character, antecedents, health or mental condition of the accused, or to the trivial nature of the offence or to the extenuating circumstances in which the offence was committed, it is not expedient to inflict any punishment, the court may, without proceeding to conviction, make an order dismissing the charge either absolutely or conditionally".

¹ See section 87 of the Penal Code.

² See section 24(3) of the Penal Code.

8. In support of Mr. Kwai's argument, he submits that the offence of affray is a misdemeanour. Defence further submit that the defendant is intending to go overseas for seasonal work therefore, if the Court can discharge him without entering a conviction.

Mitigating factor

9. Defence further submit for the Court to take into account the mitigating factors of the defendant that:
 - 9.1 The defendant enters an early guilty plea at the first opportunity. This serves Court's time and resources.
 - 9.2 The defendant is a first-time offence.
 - 9.3 The personal circumstances of the defendant that he is married with two children and he is the sole breadwinner. The Court must also consider that the defendant is self-employed.

Analysis

10. Having considered the submissions made by prosecution and defence, the next question for this Court to consider is whether or not I should impose a sentence pursuant to section 35 of the Penal Code or section 24(3) of the Penal Code?
11. In order for me to sentence the defendant pursuant to section 35 of the Penal Code, I must consider the "character, antecedents, health or mental condition of the accused, or to the trivial nature of the offence or to the extenuating circumstances in which the offence was committed, it is not expedient to inflict any punishment, the court may, without proceeding to conviction, make an order dismissing the charge either absolutely or conditionally."
12. In *Ben Tioti v Regina*³, Palmer J states;

"Generally, a conviction must be entered before passing sentence. However, if a Court intends to impose a conditional or unconditional discharge under section 35 of the Penal Code (Ch. 26), a conviction should not be recorded".
13. The Court has the opportunity to hear submissions and perused through the facts submitted before me. Having carefully considered the facts, the Court sees that both the defendant and complainant contribute towards the commission of the offence. I noted from the facts that the defendant first approached the complainant and asked him if he was the one who broke into his house. In response, the complainant turned around and yet asked the defendant to fight.
14. In fact, the defendant did not ask the complainant to fight but ask if he was the one who broke into his house. Should the complainant deny what was asked by the defendant then say so rather than turning around and asked for fight.
15. Further to that, I also noted from the facts that the complainant first hit the defendant's left side face with his right fist when they swung at each other. After the defendant been hit, he then hit the complainant's mouth. This piece of facts clearly shows how both the defendant and the complainant contribute to the commission of the offence thus, given the circumstances of the offending, I must take that into account in my sentencing.

³ See *Ben Tioti v Regina* (Unrep. Criminal Appeal Case No. 26 of 1998).

16. However, since the defendant is now appearing before me for this offence, the Court must deal with his criminal act now. The defendant must know that fighting in public place is a serious offence and the Court will not tolerate such an unlawful action. There are avenues where issues can be addressed rather than taking the law into your own hands.
17. Having carefully consider the aggravating factors, the mitigating factors, the personal circumstances of the defendant and the circumstances surrounding the offending, I am of the view that a fine is not appropriate but a sentence pursuant to section 35 of the Penal Code is appropriate in this case.
18. The Court must make sure that the sentence I will impose must deter the defendant from committing such offence in the future. Not only that, but I must also make sure that the principle of rehabilitation and retribution must also applied in my sentence.
19. Therefore, to do that, I will order the defendant to discharge without conviction pursuant to section 35 of the Penal Code but on the condition that he must not commit any offence for a period of 12 months. I must strongly warn the defendant that within the 12 months, he must not commit any offence. Once the defendant commits any offence within the period of time, the Court will not be merciful on him again.
20. The Court believe that this sentence will deter the defendant not to commit this kind of offence again and change to be better person.

Sentence Order

21. Thus, having weighed the circumstances and entirety of this matter, I now order as follows:

ORDER

- (1) **That no conviction will be entered against the defendant;**
- (2) **That the defendant to enter bound over in the sum of \$1,000 to be of good behaviour for a period of 12 months;**
- (3) **14 days right of appeal; and**
- (4) **Order accordingly.**

Dated this 31st day of August 2022.

THE COURT

