

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



Criminal Case No: 526 of 2022

In the Criminal Jurisdiction

REGINA

-v-

THOMAS FAGAN WALTER

Prosecutor: Mr Moffatt Tei

Defence: Ms Jenifer Happylyn.

Date of Plea: 28th July 2023

Date of Sentencing and Mitigating submissions: 14th May 2023

Date of Sentence: 25th August 2023

SENTENCE

Introduction

1. Mr. Thomas Fagan Walter, you were charged with one count of Simple Larceny contrary to section 261(1) of Penal Code¹.
2. You pleaded guilty to the charge on 28th July 2023 and I enter criminal conviction against you after perusing the agreed facts.
3. You were remanded in custody since 4th May 2023 upon warrant execution.
4. Matter proceeded to sentencing and mitigating Submissions on the 14th August 2023 and today I will now hand down your sentence.

Maximum Penalty

5. The offence of Simple Larceny carries a maximum penalty of 5 years imprisonment².

Agreed facts:

6. The agreed facts of your case revealed that you committed this offence on 19th October 2022 at around 3:00am o'clock in the morning. At that material date and time, you entered into an unlocked door of the dwelling house of complainant Josephine Tuhagenga and stole a bag containing a bottle of perfume, \$300.00 cash and an A23 Samsung Smart Phone³. Further submission from both parties confirmed that those stolen items were never recovered.

¹ Section 261(1) of Penal Code

² Above n1

³ Agreed Fact tendered on the 28th July 2023

Prosecution and Defence Submission

7. Prosecution oral submission covers the agreed facts, antecedent and the sentence to be considered by the court. Prosecution highlighted the case of *Regina v Karani Hynick Junior Criminal case 558 of 2022*⁴, where the defendant went into a shop, stole an Oppo brand Phone worth \$5000.00 in broad daylight causing a loss to the complainant for non-recovery of the stolen item, he was sentenced to 3 months imprisonment. In their comparative submission, Prosecution submitted that the present case is serious compared to the latter case since defendant entered into the complainant's home under the cover of darkness at 3:00am in the morning and stole from her. Furthermore, none of the stolen items were recovered. Hence, this warrants an immediate custodial sentence.
8. Defence on the other hand, submitted on the personal circumstance and mitigating factors of the defendant. Highlighting several supporting cases, Defence submitted that either a starting point of 3 months, or bond to be of good behaviour or suspended sentence is appropriate given that the defendant has already spend over 3 months (3 months 10 days to be exact at time of sentencing and mitigating submissions). Cases cited by Defence in support of their sentencing recommendation is as follow;

Comparative Case Authorities cited by Defence.

9. In *Regina v Luimalefo [2017] SBMC 46; Criminal Case 958 of 2017 (26 September 2017)*⁵ the case involves two defendants who were both charged with simple larceny, the other stole \$5000 USD and the other stole \$10000SBD from a Philippine national. Police managed to retrieve \$4500 USD from the defendant and for the other defendant who stole \$10000.00, Police only managed to retrieve \$700 as the defendant has already used up the most of the money. Court sentenced Luimalefo to 1 ½ years' imprisonment and Mr. Tome Gagame Junior was also sentenced to 2 years imprisonment.
10. In the case of *Regina v Rikiloni [2015] SBMC 2; Criminal Case 674.2014 (22 April 2015)*⁶ accused was charged for simple larceny where the defendant stole two boxes of electrical supplies from a vehicle which was driven by Thomas Wale, the court imposed custodial sentence of 7 months imprisonment taking into account that the defendant has 10 previous convictions.
11. In the case *R v Teleu [2017] SBMC 17; CMC-CRC 388 of 2017 (6 June 2017)*⁷ the complainant, parked his vehicle at the ITA hardware car park area, opposite the Hyundai Mall. He left the vehicle with all doors closed and walked out to the street. The defendant observed the vehicle was abandoned, walked over and opened the back booth. He entered through the back of the vehicle, and went straight to the front seats. He opened the drawer and removed \$850. He pocketed the money and exited the

⁴ *Regina v Karani Hynick Junior (Criminal case 558 of 2022)*

⁵ *Regina v Luimalefo [2017] SBMC 46; Criminal Case 958 of 2017 (26 September 2017)*

⁶ *Regina v Rikiloni [2015] SBMC 2; Criminal Case 674.2014 (22 April 2015)*

⁷ *R v Teleu [2017] SBMC 17; CMC-CRC 388 of 2017 (6 June 2017)*

vehicle. The complainant saw him get out of vehicle and quickly followed him and yelled out for him to stop. The defendant did not stop but kept walking away from the complainant. Some police officers conducting the visibility patrol came to assist the complainant and stopped the defendant along the street. They managed to retrieve the money from the defendant. He was then sentenced to 9 months imprisonment backdated to time spent in remand and having spent 1 month in custody, Court Ordered the Balance of the term be suspended for 2 years on the condition that he will not commit any further offence during 2 years suspension.

Aggravating Features:

12. I have paid due consideration to the facts of case and I accept the following aggravating feature;
 - 12.1. First, the seriousness of the offence generally. Both counsels would agree with me that the 5 years imprisonment maximum penalty of this offence is a reflection of the seriousness of the offence. In Regina v Kemakeza⁸ at paragraph 19, CJ Palmer stated and I quote: "*the level of the seriousness of offences is reflected on a prima facie basis by what the law imposes as the maximum penalty. The more serious an offence the greater the maximum penalty imposed*"⁹. Hence, such penalty also shows the level of tolerance within this society for such offence, which in my view society completely dislike.
 - 12.2. Secondly, Offending occur at night under the cover of darkness at 3:00am. It is serious compared to offending at daylight as it is a time when people are sleeping peacefully in their homes.
 - 12.3. All stolen Items were never recovered
 - 12.4. Loss suffered by complainant for the loss of her properties.

Mitigating Factors

13. I give credit to the defendant for the following mitigating factors;
 - 13.1. Plea of guilty at the earliest opportunity, which saves court's time and resources as this matter no longer need to proceed to trial.
 - 13.2. Defendant is remorseful. He deeply regrets his action.
 - 13.3. Defendant is a first time offender.
 - 13.4. Defendant is a young 21-year-old person living with his grandmother.

Analysis:

14. From the submissions made, I note that at 3:00am in the morning you entered an unlock dwelling house of the complainant which you as an adult, fully aware is not your home and rob her of her properties. One could tell that your intention was to deprive the homeowner at that material time and you did. You might not unlock the

⁸ Regina v Kemakeza [2008] SBHC 41; HCSI-CRC 467 of 2007 (3 September 2008)

⁹ Above n8

door as showed in the agreed facts of your case, but you entering into another person's house at the early hours of the morning and stealing from her is unlawful. Whether or not your offending was planned or not planned, it does not matter. You have the choice to decide whether to stole the items or to do the right thing and walkaway. Obviously, you made the wrong decision. You chose to steal from the complainant and you deprived her of her properties.

15. I further note from submissions that all the items you stole namely, the Bottle of Perfume, the A 23 Samsung Smart phone and \$300.00 cash were never recovered. The fact that these stolen items were never recovered will have the direct effect on the sentence I will impose upon you today.
16. There are previous cases that have come before the court that had shown distinction between cases where stolen items were recovered and those that were never recovered. In the case of *R v Luimalefo*¹⁰ cited by the Defence above, both defendants were first time offenders. Regardless, both were sentenced to 1 ½ years' and 2 years imprisonment respectively taking into account portions of monies that were never recovered because both have taken and used up for themselves. In the case of *R v Telei*,¹¹ item stolen was recovered. The only difference was that defendant had 10 previous convictions.
17. Further distinction can be clearly seen In *Eapa v Reginam [2001] SBHC 77; HC-CRC 248 OF 2001 (2 November 2001)*¹² where the defendant was a first time offender. He was sentenced to 9 months imprisonment for stealing a CD. However, on appeal Justice Kabui although upheld the 9 months sentence, suspended it for 2 years because the CD was recovered, further stating that this is a fairly serious offence¹³.
18. I note that the influential and extenuating factor of these cases are recovery or non-recovery of stolen items.
19. In the present case, I note that none of stolen items was recovered. The complainant suffered this loss. The facts of case were silent on whether you used the items for your own benefit or someone else benefitted from those stolen items. However, one thing is certain; the complainant suffered the loss of her properties because you deprived her by stealing from her. At this juncture, there is nothing else to say but for you to face the full force of law.
20. Pertaining to the case of *Ahi v Regina [2005] SBHC 53; HCSI-CRAC 124 of 2005 (29 March 2005)*¹⁴ I acknowledge that each case must be dealt with according to its own set of facts and merits.
21. As further stated in the case of *Likualua and Kokololabu v Reginam [1989] SBHC 10; [1988-1989]SILR 148 (10 November 1989)*¹⁵ where appeal was upheld, the court state and I quote;

¹⁰ Above n5

¹¹ Above n7

¹² *Eapa v Reginam [2001] SBHC 77; HC-CRC 248 OF 2001 (2 November 2001)*

¹³ Above n12

¹⁴ *Ahi v Regina [2005] SBHC 53; HCSI-CRAC 124 of 2005 (29 March 2005)*

¹⁵ *Likualua and Kokololabu v Reginam [1989] SBHC 10; [1988-1989]SILR 148 (10 November 1989)*

There is no great value in comparing similar cases. Sentencing is not a process that follows exact mathematical rules. Circumstance and people vary and it is undesirable to consider such comparison as more than a very imprecise guide¹⁶.

22. Nevertheless, cases that have come before the court will assist in determining the appropriate sentence for the present case.
23. Having considered cases referred to and drawing distinctions between these cases, I note that offence of simple larceny is a serious offence. Similarly, the non-recovery of the stolen item will bear much consequence on the sentence I will impose on you. A glimpse of few other cases on Paclii shows a punishment ranging from 6 to 9 months imprisonment as already emphasize on is whether or not the property was recovered.
24. In cases where property was recovered, a suspended sentence can be considered or imposed.
25. I am fully aware of the time you have spent in remand as raised by defence on your behalf. On the other hand, the offence you committed is a serious one. The commissioning of it is serious. Its outcome is serious. Properties of the complainant were never recovered and it was her loss.
26. Moreover, it is one of the prevalent offences that needs to be addressed. People need to be free of fear of being robbed not only on the streets, but also needs to be protected from being robbed in their own homes.
27. It is the court's view that Public interest must be protected first and far most. Individuals, communities must be protected against such unlawful actions. People's wealth and property must be protected from others who are lazy and think to enrich themselves in the manner you have committed this offence.
28. Given the above findings, I concur with the ruling of the court in the case of *R v Rafita SBHC 150; HCSI-CRC 63 of 2011 (3 December 2012)*¹⁷, when the Court referred to the case *R v Soni*¹⁸, stated that "it is time for our Courts to better utilise the scope of the maximum sentence made available to them by the legislature in a way that better reflects current sentencing and community needs and in a way that recognises the apparent contemporary ineffectiveness of benchmarks set so long ago¹⁹ and in *R v Chachia*²⁰, at paragraph 19 the Court stated that the "level of past sentencing practice runs the danger of making a mockery of the maximum penalty provided by the legislature and risks a serious erosion of confidence and faith in the sentencing process within the community at large"²¹

Sentencing Remarks

29. In sentencing you today, a strong message of specific and general deterrence, rehabilitation and retribution must therefore be sent out to you and the public that this offence is serious and anyone who wish to break the law in this regard will be punished accordingly.

¹⁶ Above n15

¹⁷ *R v Rafita SBHC 150; HCSI-CRC 63 of 2011 (3 December 2012)*

¹⁸ *Regina v Soni [2012] SBHC 120; HCSI-CRC 128 of 2011 (7 September 2012)*

¹⁹ Above n18

²⁰ *Regina v Chachia [2012] SBHC 145; HCSI-CRC 95 of 2012 (12 October 2012)*

²¹ Above n20

30. In light of the aggravating factors, I see fit that a starting point of 7 months imprisonment is appropriate. I deduct 1 month for your early guilty plea and further deduct another one month for the remainder of the mitigating factors.
31. Hence, the remaining custodial sentence is 5 months imprisonment.
32. Given that you have already spent more than 3 months in remand, the Imprisonment term is to be backdated to the date of first remand, which is the 4th of May 2023 as raised by Defence on your behalf or to be confirm by Correctional Service.
33. Therefore, in light of the above assessment, I sentence you Mr. Thomas Fagan Walter as follows;

COURT ORDERS:

1. For the offence of simple larceny contrary to section 261 (1) of Penal Code you are hereby sentenced to 5 months imprisonment.
2. Time spent in remand to be taken into account.
3. Rights to appeal within 14 days from today applies.

Dated this 25th day of August 2023.

