

IN THE CENTRAL MAGISTRATES COURT
OF SOLOMON ISLANDS

Criminal Jurisdiction

Criminal Case No. 257 of 2023

REX

V

ALI TEMOANA

Plea taken: 14 September 2023

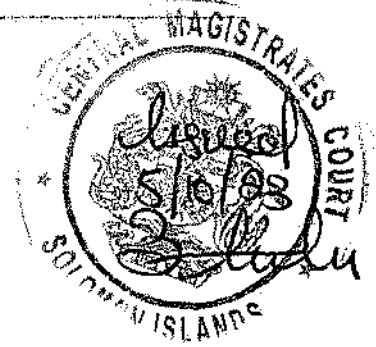
Sentencing Submissions: 21 September 2023

Sentence: 5 October 2023

Coram: *PM Hilly*

Prosecutions: *Mr. Lindsay Tamaika (ODPP)*

Defence: *Ms. Roria Sikua (PSO)* for the defendant



SENTENCE

- 1) This is the sentence of the defendant, Mr *Ali Temoana* who was charged with one count of *Robbery* contrary to section 293(1)(a) of the *Penal Code, Cap 26*, for robbing the victim, Mr Matthew Kiriau.
- 2) Upon reading of the charge, the defendant pleaded guilty to the charge. Having considered the defendant's plea and his admission to the summary of facts, I formally enter a conviction against him.
- 3) The offence of *Robbery* pursuant to S.293(1)(a) of the *Penal Code, Cap 26* provides as follows:

293.- (1) Any person who -

 - (a) being armed with any offensive weapon or instrument, or being together with one other person or more, robs, or assaults with intent to rob, any person;*
 - or*
 - (b) ...*

is guilty of a felony, and shall be liable to imprisonment for life.
- 4) Around 11am on 15 January 2023, the victim walked along the main road from China Town and met the defendant at the Matanikau Bridge. The defendant asked the victim for money, so the victim gave him \$5.00. The defendant then took out a brown handle kitchen knife on his right hand and continued to ask for money. The victim did not respond quickly so the defendant moved closer to him and told him not to speak and remain quiet. The defendant took the victim's basket which was on his neck, took out

a *vivo mobile phone* and a \$50.00 note. He gave back the victim's basket and told him to leave. The victim walked away from the defendant. The defendant was arrested on the same day and charged for being armed with a knife when he robbed victim. The phone and money were recovered by the Police when they arrested the defendant. The defendant had used \$10.00 from the \$50.00 he had robbed of the victim.

- 5) The defendant is a young person, aged 21 years old. He is single and resides with his parents at Mamana Water area. He has 4 siblings and his highest level of education is Form 3. Ms. Sikua submitted that the defendant has now joined a church youth group that has helped him stay out of trouble since the offending.
- 6) I do not find anything mitigating in favour of the defendant relevant to the offending, however I note the following mitigating factors personal to the defendant:
 - a. **Early guilty plea:** The defendant's early guilty plea to the offence he was charged with, *a very serious offence*, is an indication of his remorse and acceptance of the consequences of his actions. The Victorian Court of Appeal case of *R v D'Orta-Ekenaike*¹ stated that '*Evidence of an earlier plea of guilty amounts to a formal confession of the existence of every ingredient necessary to constitute the offence.*' Palmer CJ held in *Pitamama v R*² on the extent of reduction for a guilty plea that '*The extent of the reduction may be between one quarter and one third of what would otherwise have been the sentence, at the discretion of the sentencer.*' It is therefore an accepted authority in this jurisdiction to allow a discount for a guilty plea matter, this case is no exception.
 - b. **No priors:** There is no record before this court to suggest that the defendant has prior convictions of any criminal offence. Considering this, the defendant is a first-offender.
 - c. **Young offender:** I reiterate what was discussed in paragraph 4 above, that the defendant is a young person. Although he is not a juvenile offender, the defendant is 21 years old and has a long future ahead of him. His youthfulness is not an excuse for committing the offence. If he makes amends now and be a law-abiding citizen, he will be able to secure a good and safe future not only for himself but his entire community.
 - d. **Prospects for Rehabilitation:** I am urged by Ms Sikua who submitted that the defendant is truly sorry for his wrongdoing and since the offending, he has been participating in church programs with youths.

¹ [1998] 2 VR 140; (1997) 99 A Crim R 454 (CA)

² [2005] SBHC 45

7) Turning now to the aggravating features, I note the following present in this case as per the charge and facts before me:

- a. **Serious offence:** The penalty for the offence of *Robbery* under S.293(1)(a) of the *Penal Code, Cap 26* carries a maximum penalty of imprisonment for life. The prescribed penalty depicts that *armed robbery* is a very serious offence. However, depending on the circumstances of each case, and its peculiarity, this court can impose a lesser sentence instead of life imprisonment pursuant to S.24(2)³ of the *Penal Code, Cap 26*. Those who commit armed robbery must expect a custodial sentence given the prescribed penalty and the nature of the offence itself.
- b. **Armed with an offensive weapon:** The courts have been clear on the imposition of a weapon in the commission of an offence. At the time of the offending, the defendant was armed with a brown handle kitchen knife, a knife in these circumstances is deemed an offensive weapon. Although the defendant did not use the knife on the victim, being armed with the knife whilst asking money from the victim, is a form of immediate threat. Whilst being armed, the defendant took the victim's basket and took out the victim's mobile phone and \$50.00 cash from it. I find this feature very worrying and serious because a citizen who has every right to be protected from unlawful apprehensions and to move freely in his own country has without doubt, traumatised during the offending.
- c. **Prevalence:** There are more than 10 active cases before the court relating to armed robbery recorded in the Central Magistrates' Court at present. This shows that this type of offending has not been alleviated and will continue to be rampant in our communities if the courts are lenient in its sentencing regime for this type of offence.

8) It is important that the relevant principles of sentencing are considered by this court. The sentence to which I will impose must serve the purposes of general and specific deterrence. Although there are factors mitigating in this case, the defendant must be punished for breaking the law and be fully rehabilitated so that he is prevented from committing further offence in the future. The sentence must also teach other persons who are also minded of following the same unlawful path. Our communities must be protected from these kinds of behaviour.

9) I am grateful to parties for assisting the court with the relevant authorities that helps to determine the appropriate sentence to be imposed and the starting point for this type of offending. I have considered the cases cited by parties and have noted that the sentences

³ *Imprisonment, 24(2) A person liable to imprisonment for life or any other period may be sentenced for any shorter term.*

range from one year to 4 years imprisonment. I am unable to locate any authority in this jurisdiction that a person charged with armed robbery has been sentenced to a fine or a suspended sentence.

- 10) I find the present case akin to *R v Lee*⁴ where the court imposed one-year imprisonment on the defendant for robbing the victims and being armed with a bush knife during the offending. There is a clear distinction between the present case and *Lee*, the defendant in *Lee* committed the offence in the company of another person and at night. The defendant in the present case committed the offence alone and in broad daylight. I also consider that the amount of money used by the defendant which is \$10.00 from the \$50.00 that was stolen is not a substantial amount of money. The items have been retrieved and given back to the victim. While I accept that the items were recovered, I also bear in mind that at the material time, the victim succumbed to the defendant's demand for money and the contents in his bag for fear of his safety, because he saw the defendant was holding a knife.
- 11) The law is clear on the imposition of maximum penalty, that is reserved for the worse kind of offending. It is an accepted principle that each case must be determined based on its own set of facts and unique circumstances with the guidance of case authorities. The aggravating factors discussed in this case are serious and must not be ignored when determining the appropriate sentence to be imposed on the defendant. Equally, the mitigating factors must not be disregarded. Although the defendant is trying to make amends by involving in church activities, he must face the consequences of his actions. A supporting testimony on oath from the church that the defendant attends could have assisted the defence when submitting on the defendant's good character and prospects of rehabilitation. The absence of any supporting document and mere submission from the bar table is not convincing to this court. I am satisfied that a custodial sentence is appropriate in this case.
- 12) I am satisfied that a starting point of one-year imprisonment is appropriate. I increase three months to the starting point to reflect that aggravating features in the present case. This results in fifteen months imprisonment.
- 13) I further consider the defendant's early guilty plea and hereby reduce a third (which is 5 months) from the balance that results in ten months imprisonment. I further deduct two months to reflect the defendant's youthfulness and being a first offender. I do not doubt that the defendant is working towards being fully rehabilitated.
- 14) The defendant is therefore sentenced to **eight months imprisonment.**

⁴ [2017] SBMC 33

Orders:

- i. The defendant Mr Ali Temoana is convicted on one count of *Armed Robbery* contrary to section 293(1)(a) of the *Penal Code, Cap 26*.
- ii. The defendant is sentenced to **eight (8) months imprisonment**. The sentence commences today.
- iii. Right of appeal applies to any aggrieved party within 14 days from today.
- iv. Order accordingly.

Dated 5 October 2023

