



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

(Criminal Jurisdiction)

Criminal Case No: 234 of 2019

THE STATE -V- MARKIE ROKOTO

Coram: HOLLISON F (PRINCIPAL MAGISTRATE)

Appearances:

Ms Hellen Naqu, Senior Legal Officer, ODPP, for the Crown

Mr George Gray, Public Solicitor, PSO, for the defendant

Date of Ruling: 5th April 2023

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 Markie Rokoto pleaded guilty to one count of Careless and Inconsiderate Driving Contrary to section 40(1) of the *Road and Transport Act* [Cap 131], one count of Taking Vehicle without Authority contrary to section 59(1) of the *Road and Transport Act* [Cap 131], and one count of Possession of Police Property contrary to section 183(a) of the *Police Act 2013*. Counts 2, 4, and 6 were dropped by the Crown in the course of plea deal negotiations.
2. I now convict him based on the plea entered.

FACTS

3. The defendant who is originally from Guadalcanal Province was a member of the Police Response Team (PRT) under the National Response Department (NRD) in Rove Police Headquarters at the material time in 2019.

4. On the 19th February 2019, he went to the NRD office at the Police Headquarters where he met Police Constable (PC) Douglas Kiri for the key to the land cruiser vehicle without having the permission of the responsible officer Kitchener Kesini.

5. PC Kiri gave the key to the defendant and asked Mr Rokoto to drop him and PC Roau off.

6. As they drove out, they picked up PC Hosea and PC Ofu outside the Rove Police headquarters.

7. The defendant dropped off PC Kiri and PC Roau at the Police residential quarters at Tinge Ridge.

8. Thereafter, the defendant in the company of PC Hosea and PC Ofu returned to Rove Police Headquarters and parked at the PRT parking area.

9. At about 2200hrs, the defendant drove the land cruiser registration No. G3686 with PC Ofu and PC Hosea intending to go to Choviri.

10. The defendant was driving and, as they approached the Holy Cross Cathedral Church main road, coming from the pedestrian crossing at the Honiara City Council, the defendant suddenly turned the vehicle and it swayed and ditched into the left side of the drain, hitting a nearby cliff and laid stationary sideways against the cliff.

11. The defendant sustained injuries as a result of the accident and was later taken to the National Referral Hospital in Honiara. He was assisted by civilians at the scene.

12. Between 0100hrs and 0200hrs on 20th February 2019, the defendant went to the National Response Department Office at Rove Police Headquarters and asked PC Ronugita to open the armoury storage room to collect his personal belongings.

13. PC Ronugita opened the storage room and the defendant went in. In the course of packing his belongings, the defendant took some of the properties of the Royal Solomon Islands Police Force (RSIPF) without authorization.

14. The items include the following:

- 1) 2 black body vest;
- 2) 1 green body vest;
- 3) 1 eye glass;
- 4) 1 gas mask/puch;
- 5) 5 rounds (12-gauge buckshot Remington 870 shotgun rounds)
- 6) 10 training rounds (9mm glock training rounds).

15. The ammunitions were packed inside the green body vest.

16. The items were recovered by police officers from the National Response Department on the 20th February 2019 around 8am in the morning.

DISCUSSION AND ANALYSIS

17. In sentencing, the classic principles of sentencing such as punishment, retribution, deterrence and rehabilitation must be taken into account. In *Tii v Regina* [2017] SBCA 6; SICOA-CRAC 14 of 2016 (5 May 2017),¹ the Court of Appeal stated as follows:

21. *A sentence should be crafted to attain the goals of punishment, deterrence and rehabilitation.*

22. *The starting point should be consideration of the facts of the offence and of the appropriate range of penalty for the offence constituted by those facts. Then any aggravating circumstances should be identified.*

23. *The sentencing judge's attention should then turn to facts relating to the offender — his antecedents (including personal circumstances and criminal history, if any) and mitigating factors such as youth, remorse, or plea of guilty (including the circumstances in which the plea was entered).*

Aggravating features

18. The aggravating factors are as follows:

Maximum Sentences

19. Section 40 of the *Road and Transport Act* [Cap 131]² provides as follows:

40.—(1) *If a person drives a motor vehicle on a road without due care and attention or without reasonable consideration for other persons using the road, he shall be guilty of an offence and liable to a fine of five hundred dollars or to imprisonment for six months, and in the case of a second or subsequent conviction to a fine of seven hundred dollars or to imprisonment for six months or to both such fine and such imprisonment.*

20. Section 59 of the *Road and Transport Act* [Cap 131]³ states as follows:

59.—(1) *A person who takes and drives away a vehicle without having either the consent of the owner thereof or other lawful authority shall (subject to the next following subsection) be liable—*

(a) on conviction by the High Court, to a fine of five hundred dollars or to imprisonment for six months or to both such fine and such imprisonment;

¹ *Tii v Regina* [2017] SBCA 6; SICOA-CRAC 14 of 2016 (5 May 2017).

² *Road and Transport Act* [Cap 131], s 40

³ *Road and Transport Act* [Cap 131], s 59.

(b) on conviction by a Magistrate's Court, to a fine of two hundred dollars or to imprisonment for three months.

21. The *Penalties Miscellaneous Amendments Act 2009*⁴ has increased the penalty fines for both offences mentioned in paragraph 19 and 20 to 5000 penalty units.

22. Section 183 of the *Police Act 2013* states as follows⁵:

183 Possess police property

Any person who:

(a) has possession of police property without lawful authority or excuse, commits an offence and is liable on conviction to a penalty not exceeding 5,000 penalty units or six months imprisonment.

23. The fact that he drove the vehicle without permission and took the police properties without lawful authority brought disrepute to the Royal Solomon Islands Police Force as the main law enforcement agent of the government. I believe there are procedures and protocols for a police officer to use a police vehicle if there is a need to and the first thing that must be done is simply to seek permission.

24. I understand that police properties such as body vests, eye glasses, 12-gauge buckshot Remington 870 shotgun rounds and the training rounds are equipment and or weapons that can only be used during trainings or in certain situations such as during a patrol and public order management operations. Those properties should not be removed from the storage facility without any expressed authorization.

25. I also note that the defendant got into an accident whilst driving the police vehicle just close to the Honiara City Council Headquarters which aggravated his offending. He endangered the lives of his passengers who were his colleagues from the force, any pedestrian who might be standing close to the crime scene or place of accident, and also his own life for which he sustained injuries as well.

26. I am aware that he has resigned from his position as a police officer on the 8th September 2022, however, that does not trivialize or diminish his responsibility as a police officer at the material time.

⁴ *Penalties Miscellaneous Amendments Act 2009*

⁵ *Police Act 2013*, s183

Comparative Sentences

27. In *Regina v Oso* [2020] SBMC 32; Criminal Case 583 of 2020 (21 August 2020)⁶, the defendant was imposed with a penalty fine for breaching sections 40 and other provisions of the *Road and Transport Act* [Cap 131]. In this present case, the defendant was a police officer at the time of the offending which means he has a greater responsibility compared to a civilian.

Starting Point

28. I am satisfied that given his status as a police officer and considering the level of his culpability in the offending at the material time, I am of the view that a custodial sentence should be appropriate.

Count 1: section 40 of the Road and Transport Act

29. I will now deal with the first count. It is my considered view that 4 months' imprisonment is appropriate as a starting point. I add 2 months to reflect the aggravating features which gives a resulting sentence of 6 months,

30. I take into account all the mitigating factors such as early guilty plea, remorse, being a first time offender, the delay and his personal circumstances and I deduct 4 months from the 6 months,

31. Hence, I am satisfied that 2 months imprisonment is appropriate for the first count.

Count 3: Section 59(1) Road and Transport Act

32. In relation to the third count, I am of the view that a starting point of 2 months imprisonment is appropriate as a starting point. I add 1 month to reflect the aggravating features which gives a resulting sentence of 3 months imprisonment.

33. I take into account all the mitigating factors such as early guilty plea, remorse, being a first time offender, the delay and his personal circumstances and I deduct 2 months and 2 weeks from the 3 months.

34. Hence, I am satisfied that 2 weeks should be appropriate for the third count contrary to section 59 of the *Road and Transport Act* [Cap 131].

⁶ *Regina v Oso* [2020] SBMC 32; Criminal Case 583 of 2020 (21 August 2020)

Count 5: Possession of Police Property, section 183 of the Police Act 2013

35. For the fifth count, I am of the view that 4 months imprisonment is appropriate as a starting point. I add 2 months to reflect the aggravating features which gives a resulting sentence of 6 months imprisonment.

36. I take into account all the mitigating factors such as early guilty plea, remorse, being a first time offender, the delay and his personal circumstances and I deduct 4 months from the 6 months.

37. Therefore, I am satisfied that 2 months imprisonment is appropriate for the fifth count.

CONCLUSION

38. After balancing the core principles of sentencing such as punishment, deterrence and rehabilitation, and also the relevant factors in this case, I sentence the defendant as follows:

- 1) First count: one count of Careless and Inconsiderate Driving Contrary to section 40(1) of the *Road and Transport Act* [Cap 131]-2 months imprisonment.
- 2) Third Count: one count of Taking Vehicle without Authority contrary to section 59(1) of the *Road and Transport Act* [Cap 131]-2 weeks imprisonment
- 3) Fifth count-one count of Possession of Police Property contrary to section 183(a) of the *Police Act 2013*-2 months imprisonment.

Concurrent Sentences

39. I have considered whether or not for the sentences of the three counts (1, 3 and 5) to run concurrently, and I am satisfied that they should run concurrently as they arose almost from the same transaction and also within a span of only two days. Hence, the final sentence is 2 months' imprisonment for all the counts.

40. **Pre-Sentence-Custody.** If the defendant has served a certain period of time in custody, that must be deducted from the final sentence.

41. There must be a clear message sent out to the members of the disciplined forces such as the Police Force that being a police officer does not render a person immune from prosecution. The famous saying or principle that "no one is above the law" remains true as long as we have an impartial and well administered police force in the country.

42. I hope the total sentence sends a deterrent message to the police officers that there are consequences for unlawful conducts such as reckless driving, and taking possession or driving of a vehicle or any other property at all without authority and permission of the superiors. Government vehicles are public properties that must be used responsibly and lawfully by public servants including the police force. Government officers that are not designated to

garage an official vehicle must seek permission first by the responsible person before using any government-owned (G-plated) vehicles.

ORDERS

43. The orders of the Court are as follows:

- 1] The defendant is sentenced as follows:
 - 1) **First count:** one count of Careless and Inconsiderate Driving Contrary to section 40(1) of the *Road and Transport Act* [Cap 131]-2 months imprisonment;
 - 2) **Third Count:** one count of Taking Vehicle without Authority contrary to section 59(1) of the *Road and Transport Act* [Cap 131]-2 weeks imprisonment;
 - 3) **Fifth count**-one count of Possession of Police Property contrary to section 183(a) of the *Police Act 2013*-2 months' imprisonment.

- 2] I order that the sentences be served concurrently which means the defendant ought to serve a total of only 2 months imprisonment.

- 3] **Pre-sentence Custody.** Any period previously spent by the defendant in custody must also be deducted from this sentence.

- 4] Right of Appeal within 14 days.

- 5] The court so orders.

