

IN THE CENTRAL MAGISTRATES' COURT)
OF SOLOMON ISLANDS)

Criminal Case No. _____

Held at Honiara)

Criminal Jurisdiction



BETWEEN:

REX

v.

AND:

NICKSON VISONA

Date of Sentence: 2nd October 2024

Prosecutions: *Mr. Abel Maelanga* (Police Prosecutions)

Defence: *Ms Kukura*

SENTENCE

Introduction

1. The accused, Mr Nickson Visona pleaded guilty to one count of Presence of alcohol in person's blood, pursuant to section 43 A (1) (a) of the Road Transport Act Cap 131 (as amended by the Police and Transport Legislation (Amendment) Alcohol Testing) Act 2016.
2. I enter conviction on his guilty plea.
3. The sentencing and mitigation stage have already been completed and today I will be handing down the sentence.

Agreed Facts

4. I will not repeat the facts as it has been agreed to by both the Prosecutions, and the accused through Ms Kukura.

Offence and Maximum Penalty

5. The Maximum Penalties for this offence can be found under the Road Transport Act Cap 131, the Police and Transport Legislation (amendment) Alcohol Testing 2016, and the Penalties Miscellaneous Act 2009. For the Purposes of sentencing I will outline the maximum penalty as follows:

- a. Presence of alcohol in person's blood, pursuant to section 43 A (1) of the Road Transport Act Cap 131 (as amended by the Police and Transport Legislation (Amendment) Alcohol Testing) Act 2016. The maximum penalty is ten thousand penalty units, or twelve months imprisonment, or both to such fine and imprisonment.
6. The maximum penalties indicates the legislators' intention to deter people from committing the offense. Certainly, it is well established in law that the maximum penalty is reserved for the most serious types of offenses. As highlighted by Sir Albert, R Palmer, CJ, at paragraph 19 of *Regina v Kemazeka*¹, the seriousness of an offence, is reflected through the maximum penalties imposed by the law. In his own words, the following were stated;

"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 imposed²."

Aggravating Features

7. Having perused the brief facts, these are the aggravating features that I find in your case;
1. The general seriousness of the offences as reflected through the Maximum Penalty.
 2. The prevalence of these offending. The Courts have seen an increased number of this type of offending coming before the courts and it is very concerning. The rise in traffic offenses reflects a troubling trend that demands immediate attention and action.
 3. Prosecution submits that the accused was under the influence of alcohol is a grave aggravating feature. This behaviour not only endangers the accused's own life but also poses a significant risk to the safety of other road users and pedestrians.
 4. The offending occur at night time.

Case authorities

8. For reasons that the accused appeared in person I must set out the sentencing guidelines, case authorities, and sentencing tariffs to pitch the appropriate starting point.

¹ 2008] SBHC 41; HCSI-CRC 467 of 2007 (3 September 2008)

² At paragraph 19 of Above n12

9. In ***Regina v Fanasia***³, the accused was sentenced to \$3000 penalty unit fine. He was charged with one count of Presence of alcohol in a person's blood, c/s 43 A(1)(a) of the Road Transport Act. The facts reveal that the accused On August 20, 2021, between 12:05 a.m. and 12:30 a.m., the Kukum operations team conducted a traffic check in front of the Kukum Traffic Centre on Ropi Street. During the check, Police Constable Kabi inspected a white Toyota Corolla, registration number T-0208, and confirmed that the vehicle's license was valid. The defendant was then given a breathalyser test, which initially recorded a blood alcohol concentration of 0.216 grams per 100 millilitres. After a ten-minute observation period, a subsequent breathalyser test showed a reading of 0.213 grams per 100 millilitres.
10. Your sentence will be less than the sentence imposed in the case of ***Regina v Fanasia***⁴, because the alcohol concentration in your blood is less than the alcohol concentration found in Fanasia's case.
11. ***Regina v Parsad***⁵, the accused pleaded guilty to one count of Presence of Alcohol in a person's blood, c/s 43 A (1) of the Road Transport Act (As amended by the Police and Transport Legislation (Amendment) alcohol Testing) Act. The facts revealed that the accused was returning to his residence at West Kola from the Golf Club when he was stopped by the police at the junction near his home. The incident occurred between 04:24 hours and 04:45 hours, prior to sunrise. Following his stop, he was taken to Kukum Police Station, where breathalyser tests were conducted. The final test results indicated a blood alcohol concentration of 0.167%. He was sentenced as follows: a starting point of \$4000 penalty unit was imposed, a deduction of 1,300 to reflect the mitigating factors, resulting in a fine of \$2,700. in default 6 months imprisonment. Further to that, S29(1) and 29 (8) of the RT Act was invoked for a period of 12 months.
12. Although the alcohol concentration in your blood was comparable to that found in the ***Parsad***⁶ matter, your sentence is expected to be less severe.
13. Having outlined the above cases that reveals the ranges of tariffs applied in Courts within this Jurisdiction, it is in my view that this case when compared to the above-cited cases falls within the low-range of the seriousness spectrum.

³ [2021] SBMC 13; Criminal Case 677 of 2021

⁴ As above

⁵ [2021] SBMC 5; Criminal case 240 of 2021

⁶ [2021] SBMC 5; Criminal case 240 of 2021

Sentencing Tariff:

14. For the offence of Presence of alcohol in a person's blood, the sentencing tariff ranges from bound over sentence to 4000 penalty unit or 12 months imprisonment.

Sentencing Principle:

15. In terms of sentencing, the cardinal principle is simple, that is, each case must be decided on its own unique set of facts. Past cases can only be used as a guide and sometimes can be of little value. In *Sahu v Regina*⁷ the Court stated:

"It is well accepted that the technique of comparing sentences imposed in different cases is of limited assistance and provides only imperfect guidance as to the appropriate sentence in any given case." However, to ensure uniformity and coherence, past cases can be of significant assistance.

16. In *Cheffers v R*⁸ then CJ Ward, stated:

"Driving whilst under the influence of alcohol is extremely serious offence. Anyone who drives in such a state has deliberately done a course of action that puts his own and far more seriously, other people's lives at risk. However carefully he may attempt to drive, his reactions if confronted with an emergency will not be effective as when he has taken no alcohol."

17. In determining the appropriate sentence for the accused, the Court has carefully considered both specific and general deterrence. Specific deterrence aims to prevent the accused from engaging in similar criminal conduct in the future, ensuring that the individual understands the consequences of their actions and refrains from reoffending. General deterrence, on the other hand, serves to discourage others who might contemplate similar unlawful behaviour by demonstrating that violations of the law will result in significant repercussions. It is the Court's intention that the sentence imposed will not only address the individual's conduct but also send a clear message to the wider community that breaches of traffic laws, particularly those involving alcohol and vehicle safety, will not be tolerated.

18. Hence, having assessed the entirety of this matter, including the mitigating and aggravating factors, and the need for both specific and general deterrence, retribution, and the public interest, I am of the view that the most appropriate sentence I should impose on the accused is one of fine.

⁷ [2012] SBHC 122, HCSI-CRC 504 OF 2011

⁸ Unrep. Criminal Case Number 11 of 1989

Starting Point:

19. Having meticulously reviewed the aggravating factors pertinent to this case, and after giving due consideration to the sentencing tariffs established in the cases cited, I find it appropriate to set the starting point for Presence of alcohol in a person's blood at a penalty Unit of - \$2,500.00.

Mitigating Factors

20. I take due account to the following factors as Mitigation in your case:

1. Early Guilty Plea & Remorse - The accused pleaded guilty at the first available opportunity. His guilty plea demonstrates remorse and has conserved the court's time and resources that would have been expended in conducting a full trial. This clearly shows that the accused has taken responsibility for his actions and accepts the consequences. As settled in *Qoloni v R⁹*, guilty pleas attract discounted sentences, I shall give full discount available in the case of that is 30 % discount.
2. Cooperated well with Police.

Personal Circumstance:

21. The personal circumstances in relation to the accused is discussed as follows:
- a. The accused is 26 years old. Lives at Koltoha Village, Kakabona, West Guadalcanal.
 - b. Accused is married with one child.
 - c. He works as a taxi driver for another person.
 - d. First time offender.
 - e. Asthmatic person

Sentencing Consideration:

22. The Court takes judicial notice that driving under the influence of alcohol is a leading cause of road traffic accidents. It is a matter of common knowledge that such behaviour significantly impairs a driver's ability to operate a vehicle safely, thereby increasing the risk of accidents. Tragically, many lives have been lost and numerous individuals have been severely affected due to the actions of drivers who operate their vehicles while intoxicated. This understanding underscores the importance of enforcing stringent measures against impaired driving to safeguard public safety and prevent such tragic outcomes.

⁹ [2005] SBHC 73

23. In determining the appropriate sentence, I have established a starting point of \$2,500 penalty units, taking into account the aggravating features of your case. From this amount, I have deducted \$750 in recognition of your early guilty plea. Additionally, I have further reduced the penalty by \$750 to account for your personal circumstances and other mitigating factors pertinent to this case. A total sentence of \$1000 penalty unit is imposed.

24. The Court has considered that under sections 29(1) and 34(1) of the Road Transport Act, the decision to disqualify an accused's license is discretionary. In light of your personal circumstances, I will not invoke Section 29(1) of the Road Transport Act.

Sentencing Order:

1. I hereby sentence you Mr Nickson Visona to a total fine of \$1,000.00 penalty unit.
2. The fine must be paid to this court by 1st November 2024.
3. In default of the above payment - 4 months imprisonment.
4. 14 days right of appeal applies.
5. Order Accordingly.

THE COURT


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Dalcy Belapita
Principal Magistrate

