



2. The facts agreed upon by parties show, that on a date between the 1<sup>st</sup> of July 2024, and the 31<sup>st</sup> of July 2024, you entered the Complainant's dwelling house, and stole a bag that was said to have contained a Sumsung mobile phone that is valued at \$1,900. The incident occurred in the evening.
3. Facts also show that you entered and existed the house through the window. Furthermore, facts also saw that prior to the offending, you worked as a carpenter for the Complainant. It was due to the Complainant's failure to pay you as promised, that you committed the offending at hand.
4. It is also stated that you sold the phone for \$100.00, after discovering that the phone was not working.

#### **Maximum Penalty**

5. The maximum penalty for this offence, as stipulated by law, is 14 years imprisonment<sup>1</sup>. I believe, that it is important to always highlight the comments by His Lordship, Palmer CJ, in the case of **Regina v Kemakeza**<sup>2</sup>, where he states, that 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. On this note, it is also worth highlighting, that any offending that is caught by this section can cover offending's of different levels of seriousness.
6. I would also like to add, that maximum penalties, are put in place to balance the principles of justice and fairness and the need to protect societal norms. At the same time, they also provide strong warnings about the significance and importance of the laws they enforce.

#### **Acquittal/ Conviction**

7. Having recorded your guilty plea, and having noted your admission to the agreed facts, I now enter conviction against you.

#### **Matters of aggravation**

8. What I deem to be aggravating in nature, is the offending in itself. It can be inferred from the facts, that you have been plotting against the Complainant for some time. You waited until a time that was convenient for you, to carry out your plot.
9. You entered and existed the Complainant's house, through the window. It is not normal for someone to enter a person's house through the window without the owner's knowledge and consent. Someone can only do so, if he or she is acting with bad intentions.
10. Further to this, your actions, shows a clear breach to the security and sanctity of the Complainant's private home.
11. There was no mention of whether the mobile phone was retrieved or not, hence, I can draw the inference that it was never retrieved.

#### **Matters of mitigation**

12. There are several factors that the defence has ask me to consider in this regard, one of these factors, is the guilty plea you entered. I am told that you pleaded guilty at your earliest opportunity, which means, time and resources will no doubt be spared. Furthermore, I am asked to consider your youthfulness, which should tell me that there are high prospects for change on your part. Moreover, I am also told that you have cooperated with the Police during the time of your apprehension. I am also asked to consider the fact that you are a first-time offender.

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<sup>1</sup> Section 269 of the Penal Code of Solomon Islands.

<sup>2</sup> [2008] SBHC 41; HCSI-CRC 467 of 2007 (3 September 2008).

## Comparative sentencing

13. Parties have referred to a number of case authorities to assist me in reaching a sentence that is proportionate to the nature of this offending, as well as to minimize objectional disparity.
14. The defence cited the case of **Regina v Tonto**<sup>3</sup>, where the Defendant was charged with 3 counts, one of which is that of Larceny in a Dwelling House. The facts relating to this offending involves the stealing of properties inside the Complainant's house. He was sentenced to 1 ½ years' imprisonment for this offence. He was sentenced to a total of 6 years and 2 months imprisonment for all 3 counts.
15. The Crown referred to the case of **Talifai v Regina**<sup>4</sup>, the Appellant in that matter appealed against the sentence impose on him at the Magistrate's Court. He was charged with one count of Robbery and one count of Larceny from a Dwelling House. He was sentenced to 1-year imprisonment for the latter and 4 years imprisonment for the former. He was further ordered to serve both sentences in a cumulative manner, or in another words, the sentences were to run conservatively, bringing the total years to 5 years imprisonment.
16. The sentence was quashed following appeal, and was further reduced to 38 months imprisonment. The High Court highlighted that the lower court had failed to consider the totality principle.
17. The case of **Gore v Reginam**<sup>5</sup>, was also cited, where the Appellant was charged with a total of 5 counts. Count 1, was Larceny from a Dwelling House. He was sentenced to 9 months imprisonment for the offence of Larceny from a Dwelling House. He was further sentenced to 6 months for count 2, 6 months for count 3, 12 months for count 4, and 3 months for count 5. The total sentence was 36 months. Upon appeal, his sentence was reduced, taking into consideration the totality principle. Hence for the offence of Larceny from a Dwelling House, his sentence was reduced from 9 months imprisonment to 6 months imprisonment and was ordered to be consecutive. The sentence for count 2 and 3 were both reduced to 3 months each and were ordered to be served concurrently. The sentences for counts 4 and 5 were upheld. The substituted sentence upon appeal was 21 months imprisonment. The Appellant was then ordered to be released at the rising of the court, as he had already served a substantial part of the sentence.
18. Having summarised these cases, I now turn to the case of **Sau v R [1982] SILR 65**<sup>6</sup> Daly CJ commented at page 69:

*"I must add one further observation on the sentencing process and on appeals against sentence. There is an increasing practice of reference being made to specific previous cases in court. This was done by the learned magistrate in this case and the dissimilarities give counsel a ready – made ground for argument which they understandably take. Sentencing is not an exact mathematical process; if it were it could be done by a computer. The human element both in the person before the court and the sentencer remain a vital part of the process. Previous sentences demonstrate principles or parameters of sentence; but they should not be used as binding precedents to reach a sentence in a particular case. All the judiciary have access to each other's sentences and we must rely upon the good sense and experience of the judiciary to reach sentences which reflect not only their own views but also the views of the community.*
19. Similar sentiments were made in the case of **Joel Likilia & Allen Kokolobu v R [1988 – 89] SILR 148**<sup>7</sup>, where Ward CJ, as he was then, highlighted the following:

<sup>3</sup> [2017] SBMC 60; Criminal Case 1220 of 2017 (12 December 2017)

<sup>4</sup> [2011] SBHC 16; HCSI-CRC 85 of 2010 (30 March 2011)

<sup>5</sup> [2007] SBHC 53; HCSI-CRC 84 of 2006 (25 May 2007)

<sup>6</sup> [1982] SILR 65

<sup>7</sup> [1988 – 89] SILR 148

*Sentencing is not a process that follows exact mathematical rules. Circumstances and people vary and it is undesirable to consider such comparisons as more than a very imprecise guide.*

20. The Court also highlighted similar remarks in the case of **R v Ben Tugale, Brown Beu, Nelson Oma, James Sala, Loius Lipa, Charles Meaio & John Teti (Unrep. Criminal Case No. 12 of 1997)**<sup>8</sup> Lungole – Awich J, as he was then, commented at page 21:  
*“Punishment in one case usually cannot be matched exactly with punishment in another. Circumstances usually differ even if only in details. Public view about how serious an offence is regarded also changes. Prevalence or otherwise of an offence during a particular period also counts.”*
21. The cases cited in paragraphs 17 to 19, highlights, the need to acknowledge the distinction between each and every case that comes before the court. A sentence serves its purpose, when it is seen to deter and rehabilitate people from wrongdoing, addresses the concern and safety of the public interest, as well as emphasising on the purpose and significance of the laws that are being breached.

### Sentencing remarks

22. Mr Menapi, I was told about the circumstances that led to what you did. There is always a time and place to address the frustration you were faced with during the material time. Despite your frustrations, it is never right, to take the law into your own hands.
23. I was told that there was a reconciliation that took place between your father and the Complainant. Further to this, your father was said to have given \$500.00 to the Complainant. I would have preferred if a statement was made and tendered to support this piece of evidence or a letter was signed by the Complainant in support of the reconciliation.
24. Your father had also brought someone with him to court on the date in which sentencing submissions were made. Defence Counsel, Mr Hatingongo told me, that the person your father brought, is the Complainant. This person spoke very briefly about the purported reconciliation.
25. Further to this, I must say, that your father has played a significant role, in resolving the situation between the Complainant and yourself. The reconciliation Mr Hatingongo is referring to, in my view, was initiated by someone else, not you.
26. Your father, has gone out of the way to give money to the Complainant out of his own pocket. While one might think that he is your father, and is obligated to do the things he did, you are the culprit in this scenario. You must face the consequences of your wrongdoing.
27. I hope that you have learnt something from the situation you placed yourself in. It is highly likely that people who know you, would not want to risk hiring you to do any casual work for them with the fear that you might do the same thing done to the Complainant, if they are to delay in paying you.
28. I also note that you failed to appear in court on the 26<sup>th</sup> of August 2024, this then resulted in a warrant of arrest being issued against you. on the 21<sup>st</sup> of November 2024, you were remanded in custody after being unable to convince the court with unsupported explanations.
29. Overall, the outcome of this case highly depends on the circumstances and factors involved. I have already identified the factors deemed as aggravating and mitigating in nature.
30. This morning, I will impose a sentence, that aims to deter you and likeminded offenders from engaging in this kind of unlawful act. This sentence also takes into consideration the need for rehabilitation, retribution and prevention.
31. Hence, with the circumstances presented I am of the view, that the most appropriate sentence to impose, is that of custodial sentence. Bearing in mind that the maximum penalty for this offence,

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<sup>8</sup> (Unrep. Criminal Case No. 12 of 1997)

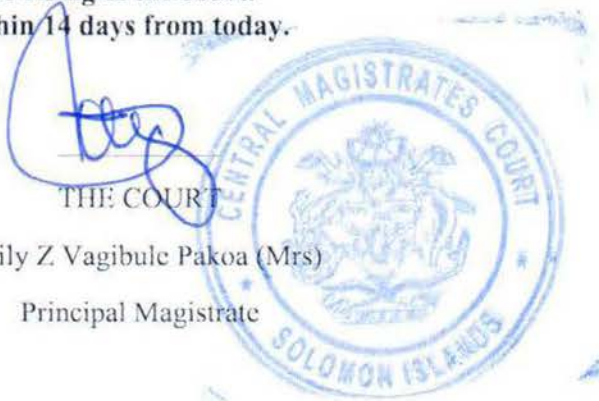
is that of 14 years imprisonment, I will be considering a range between 6 months to 12 months imprisonment. I further pitch my starting point at 12 months imprisonment. This is done on the basis, that an offending that is caught by the section at hand, can cover offending's of different levels of seriousness. It is my view, that the circumstances involved warrants a starting point of 12 months imprisonment. I add 8 months to reflect the 4 factors highlighted under the matters of aggravation (12+8=20).

32. I minus 1/3 of the starting point to reflect the guilty plea taken (20-4=16). I further deduct 7 months to reflect the remaining mitigating factors involved (16-7=9), bring us to 9 months.
33. It is with this, that I now order as follows:

**Orders:**

- (i) **Mr Bravis Menapi, you are sentenced to a term of imprisonment for 9 months;**
- (ii) **Having spent more than 1 month in custody, I order that the remaining period be fully suspended, on the condition that you are not to commit any further offence.**
- (iii) **A breach to order (ii) will result in the automatic reinstatement of the suspended period herein.**
- (iv) **You are to be released at the rising of the court.**
- (v) **Right of appeal applies within 14 days from today.**

Dated this 13<sup>th</sup> day of January 2025.



THE COURT  
Emily Z Vagibule Pakoa (Mrs)  
Principal Magistrate