

**SAMSON KUNUA -V- REGINAM**

**High Court of Solomon Islands  
(Mwanosalua J)**

**Criminal Appeal No. 437 of 2004**

**Hearing: 21<sup>st</sup> October 2004**

**Judgment: 29<sup>th</sup> October 2004**

K. Averre for the Appellant

S. Balea for the Crown

**Mwanosalua J:** The Appellant pleaded guilty to a charge of going armed in public, contrary to section 83 of the Penal Code (Cap.26). He was convicted upon his own guilty plea and sentenced to 9 months imprisonment with effect from 2<sup>nd</sup> September 2004.

The grounds of appeal were filed on 6<sup>th</sup> September 2004.

He was not represented by counsel in the court below. He lodged three grounds of appeal against sentence. First, he was not summoned to court. Second, he had a knife not a pistol as the informer had told the police. Third, he has a family with insufficient funds to live on. On the outset grounds (1) and (3) should be struck out as contrary to section 284 of the Criminal Procedure code (Cap.7), leaving only ground (2) as the valid ground for consideration by the Court.

Facts on the record of this case.

The Appellant was not represented by counsel in the court below. He was charged with going armed in public. He understood the charge and pleaded guilty to it. He agreed he had a knife and not a pistol. He is 51 years old. He is married. He has no previous conviction. He did not say anything on behalf of himself in mitigation.

The facts which the police prosecutor gave to the court showed that on February 12<sup>th</sup>, 2004, the Appellant was at the Magistrates' court premises. This was about 2.30pm. He was seen there by a person called Selwyn Surimalefo who knew him well. Selwyn Surimalefo saw an object which looked like a pistol inside the left side pocket of the Appellant's trousers. Selwyn Surimalefo asked the Appellant why RAMSI police did not detect his pistol.

The Appellant responded by saying that RAMSI would not be able to detect his pistol. Selwyn Surimalefo then left the Appellant and went into the court room to report the Appellant to the police. There was no police officer in court. On February 14<sup>th</sup>, 2004, the police searched his house under a search warrant. During the search no pistol was found except a knife about 30cm in length. The knife was confiscated for exhibit.

He was given credit for entering a guilty plea and for having no previous conviction. The commission of the offence in the court premises made the offence serious. It was thus considered that a custodial sentence be imposed on him. This would serve as deterrence to people going armed in court premises. He was therefore sentenced to 9 months imprisonment. The knife confiscated from his house was forfeited and ordered to be destroyed.

He now appeals to this court against the length of his sentence as reflected in the second ground of his appeal.

A plea of guilty is itself an admission of all the essential facts necessary to constitute the offence with which the appellant is charged, and this includes all the material allegations contained in the charge which, had the case been defended, the crown would have to establish beyond reasonable doubt.

Mr. Averre of counsel who represented the Appellant in this appeal, submitted that the sentence of 9 months was manifestly excessive because the Appellant is now 51 years old; he pleaded guilty; he was a first offender; he did not threaten anyone with the knife; he is a family man and the circumstances in which the offence was committed were not serious.

I accept the submission by counsel for the Appellant that the sentence of 9 months was manifestly excessive in the circumstance of this case.

Although there was a guilty plea entered in this case, the court must still come to some view of the facts of the case in order to access the penalty to be imposed. There was no evidence of this in this case.

The guilty plea has saved considerable time and expense of a trial. It also shows that the Appellant was sorry about his offence. He assisted the court by readily admitting that he carried a knife rather than a pistol.

He is a first offender with clean record. He has stayed out of trouble with the law for many years. He is a married man with a family and previous good character. The circumstances in which the Appellant committed the offence should reflect the length of the custodial sentence imposed on him.

I now turn to an appeal by the Appellant against conviction. That appeal was lodged in this court on 21<sup>st</sup> October 2004, the very date that this appeal was heard. There was no record in the court file to show that leave was granted to enlarge time to appeal under Section 285(1) of the Criminal Procedure Code (Cap.7). Further, there was also no record to show that leave was granted under Section 286(4) of the Criminal Procedure Code to file additional grounds of appeal. This court is therefore unable to entertain the Appellant's appeal against conviction.

Decision: I am satisfied that the appropriate sentence is one of one month three weeks and six days.

**Orders of the court:**

1. Allow appeal.
2. Quash order of the Magistrates Court dated 2<sup>nd</sup> September 2004 imposing sentence of 9 months.
3. Substitute sentence of one month three weeks and six days.
4. Appellant to be released from prison at the rising of this court as he has served the substituted sentence.

**THE COURT**