

**TIMOTHY UROBO - V- REGINA**

**High Court of Solomon Islands  
(Palmer CJ)**

**Criminal Case Number 396 of 2004**

**Date of Hearing: 30<sup>th</sup> August 2004**

**Date of Judgement: 31<sup>st</sup> August 2004**

**K. Averre (Public Solicitor) for the Applicant**

**C. Ryan (Senior Crown Prosecutor) for the Respondent**

**Palmer CJ:** The Applicant was convicted by the Magistrates Court for a variety of offences set out in the affidavit of Ken Averre filed 26<sup>th</sup> August 2004. These included the following:

- (i) Malicious Damage (04-Jul-03) convicted after trial. A bush knife was used in the commission of this offence where the passenger door of a vehicle it seems was cut four times and the passenger window broken.
- (ii) Going armed in public (04-Jul-03) – guilty plea entered on 18-May-04.
- (iii) Malicious Damage (08-Dec-03) – guilty plea. Defendant threw knife at vehicle and caused damage.
- (iv) Going armed in public (08-Dec-03) guilty plea.
- (v) Threatening violence (28-Apr-04) guilty plea. Allegation involved applicant's mother. He wanted to stop his brother from working and swung a knife at her, cut some of her cooking utensils and threatened her.
- (vi) Threatening violence (01-Mar-04) guilty plea. Member of the community. He threatened the complainant through his sister that he would "chop his head off anywhere" or words to that effect.

All these offences are violence related, serious and a custodial sentence is inevitable. It is therefore virtually impossible to come to this court and ask for bail unless exceptional reasons or grounds are demonstrated in such a case as this pending sentence.

The only reason put before me as the basis for this bail application is the submission of the existence of some psychiatric illness. I do not know when this illness began to surface but it seems that during his trial and throughout the period he was dealt with by the magistrates court, this was never brought to its attention or to the Magistrate dealing with his case, unless of-course these manifestations became more acute after he was remanded in prison and over a period of time. At no time however has it been suggested it seems that he was mentally unfit to stand trial for his actions. Had that been the case, insanity I presume would have been pleaded as a defence to his actions – see section 12 of the Penal Code. That was not done and so criminal proceedings have been

completed, he has been convicted after trial or guilty pleas and is now awaiting sentence. He ought to have been sentenced. That has not been done it seems due to some concerns expressed I believe by his Counsel of some latent mental disorder manifested by this accused and thereby requested that a psychiatric report be prepared on him. I do not know the causes of delay but a report finally has been made dated 2<sup>nd</sup> August 2004 and the court below should now consider sentencing the Applicant and not prolong the matter further. If a further report is required then the court below can consider that after hearing submissions. If the court decides that a further report is necessary then a direction can be made to that effect for such a report to be produced for the courts consideration within a time period! If there is delay, then explanations must be sought. The court must take charge of its case and not leave it entirely to counsels to chase up on the reports or leave it to the whim of others. Court directions or orders must be respected and receive priority over anything else. Where there are long delays with no satisfactory explanations, then persons responsible may have to be summoned to court to provide explanations under oath.

The recommendations of the psychiatric nurse William Same ("**Psychiatric Nurse**") in his report is very straightforward. He says:

*"We need to interview and review him again to confirm the diagnoses. We withhold treatments at this point of time because treatments will confuse diagnosis."*

The report serves two purposes. First it assists the court in reaching a sentence that is fair and just after taking into account inter alia, what is said in such report, its relevance and applicability. Secondly, it assists the accused as it helps to identify as accurately as possible what may be wrong with him and whether any treatment should be given.

If the court below considers that a further report will be necessary to assist it in imposing sentence then it can make directions/orders to that effect. In the meantime the Psychiatric Nurse should, consistent with his recommendations, make further appointment to see the accused at Rove for further interview and review. This requires cooperation from all parties, the Prison Authorities, the accused, his counsel and the Psychiatric Nurse or someone from the Psychiatric Unit at the National Referral Hospital. If the court's assistance is needed then counsel for the accused can make such application to the court.

The issue in this bail application is based on the concerns that the report had been slow in coming and that the accused appeared to have been left untreated for his mental illness. It is felt that rather than leaving him in custody he should be released on bail in the hope that this would expedite matters. I think those concerns have been adequately addressed by the production of the report and its recommendations. The reason why he has not been treated is because the Psychiatric Nurse felt that a further interview and review was necessary to confirm diagnosis.

The report should now be put before the court and the matter considered for sentence. If the court considers that a further report is necessary before it can effectively pass sentence then it should direct that such a report be produced within a time frame. Sentence in this case should no longer be dragged on.

If the diagnosis in the report is confirmed, then appropriate treatment by the Psychiatric Nurse or others in the Psychiatric Unit can be provided. The treatment of the mental illness of this accused is a matter for those relevant authorities to address. It should not be an impediment to the consideration of sentence. The accused can be treated whilst serving sentence. If however, it transpires that the treatment he receives is not helping him and that he becomes virtually an invalid or incapable of helping himself in prison, or the situation becomes life threatening due to the state of his mental health then appropriate application can be made to the court for consideration as to what should be done. Releasing this accused out into the community now, pending sentence however, is not the answer to the problems encountered so far. The nature of the offences he has been convicted of are very serious, violence related and involved the use of a weapon. A custodial sentence is inevitable in such circumstances.

There is clear evidence of having evaded police for a period of time after the commission of one of his offences. He was first remanded on 1<sup>st</sup> or 5<sup>th</sup> September 2003 and released on bail on 19<sup>th</sup> September. Whilst on bail however he re-offended and was arrested, charged and allowed on bail. He absconded sometime in February 2004, was re-arrested and has been in custody since. When these factors are taken into account together with his mental state as described by the Psychiatric Nurse there is no way this court can grant bail even if it is under the belief that he may get better attention if released. The risk of releasing him into the community cannot be allowed by this court in the light of what has transpired. The risk far outweighs the public interest. There is real possibility that he may re-offend if further released on bail pending sentence. Further, it has not been shown to me that he cannot get the same attention if he was released into the custody of a relative or a mental institution under the Mental Treatment Act. Whilst Rove Central Prison may have had its problems in the past couple of weeks, that is a matter which will have to be addressed by the Prison Authorities until such time as it is possible to permit visits to be made again. If the Psychiatric Nurse cannot be brought to Central Prison to see the accused then alternatives may have to be considered such as having this accused taken under escort to see the Psychiatric Nurse.

It is my respectful view that the matter should be listed by the court below for sentence within 7 days and appropriate submissions made for the court to consider including consideration of the report of the Psychiatric Nurse.

I note concerns raised about his mental health. That is a matter for which the Psychiatric Nurse or other qualified doctor can address as soon as it is possible for a visit by them to be made but it should not be later than 7 days from today.

I am not satisfied bail should be granted in this case. I direct that the matter be listed by the court below with the view to passing sentence on this outstanding case within 7 days.

**The Court.**