



IN THE CENTRAL MAGISTRATES COURT OF SOLOMON ISLANDS

AT HONIARA

(Criminal Jurisdiction)

Criminal Case No **532 of 2019**

REGINA

-V-

COLLIN HOKA

Coram: HOLLISON F (PRINCIPAL MAGISTRATE)

Appearances:

Ms P Tabepuda for the Crown (DPP)

Mr F Kama, Public Solicitors Office, for the defendant

Date: **20th DECEMBER 2019.**

Notice: *This copy of the Court's Reasons for Judgment/Sentence is subject to formal revision prior to publication.*

SENTENCE

1. The Defendant Mr Collin Hoka was charged with one count of assault causing bodily harm contrary to section 245 of the *Penal Code* [Cap 26].
2. He was originally charged with one count of grievous bodily harm contrary to section 226 of the *Penal Code* [Cap 26]. However, after a successful plea deal between the defence counsel and the Office of the Director of Public Prosecutions, the charge was reduced to the present charge that the defendant pleaded guilty to.
3. Mr Hoka pleaded guilty to one count of assault causing bodily harm contrary to section 245 of the *Penal Code* [Cap 26]. Based on the plea entered, I now convict Mr Hoka accordingly.

Facts

Antecedent:

4. His particulars are as follows:
 - 1) Mr Hoka is in his 20s;
 - 2) He has no previous conviction.
 - 3) He is married with two children.
 - 4) He has no formal employment but sometimes earns money through selling of goods.
5. The incident in the present case occurred at Koilovala village on Small Ngella in the Central Islands Province. Both the accused and the victim are natives of the said village.
6. On or about the 17th March 2019, at around 5pm in the evening, the victim was at the beach playing cards with a group of people when the accused suddenly assaulted him.
7. The accused held a steel iron rod and hit the complainant on the mouth. The steel iron rod was 30 to 40 centimeters in length. The complainant as a result sustained a fractured tooth and eventually lost one of his teeth.
8. He also experienced tooth trauma and has taken medication for 5 days for the infection and the pain he suffered as a result of the assault.
9. The accused was also under the influence of alcohol during the time of offending.
10. The accused has also paid a compensation for the tooth that the complainant lost.

Discussion and Analysis

11. Section 245 of the *Penal Code* [Cap.26]¹ provides as follows:

245. Any person who commits an assault occasioning actual bodily harm is guilty of a misdemeanour, and shall be liable to imprisonment for five years.

Aggravating factors:

12. The Aggravating factors are as follows:
 - 1) *The use of dangerous weapon.* The accused used an iron steel rod to hit the complainant's mouth. It caused injury or harm to the victim in which the victim lost a tooth.

¹ *Penal Code* [Cap.26], s 245.

- 2) *Loss of a tooth.* The complainant sustained a fractured tooth which unfortunately later fell off. This is a loss for the defendant, and it actually incapacitated the victim to some extent in terms of his ability to chew food.
- 3) The defendant did the offending under the influence of alcohol.
- 4) *Unprovoked action.* The victim was playing cards with the other people at the beach when all of a sudden, the defendant appeared and hit the complainant on the mouth using the steel rod.
- 5) *Premeditation.* The action by the defendant was premeditated. There was an existing disagreement between the defendant and the complainant. The defendant on that day of the incident came straight to the complainant and hit the complainant with the iron steel rod.

Mitigating factors:

13. The mitigating factors are as follows:

- 1) *Guilty plea and Remorseful.* The defendant pleaded guilty in the first instance which shows that he is remorseful. This also saves the court's time and resources of conducting a trial.
- 2) *He is a first-time offender.* The defendant is a first time offender and must be given an allowance.
- 3) *High Chance of Rehabilitation.* The defendant is only 28 years of age and has a high chance of rehabilitation.
- 4) *Reconciliation and compensation.* He paid at least SBD 200 as compensation for the tooth lost by the complainant. Another reconciliation was done on the 19th October 2019 in which the defendant and the victim exchanged between themselves SBD 2000 and SBD 500 respectively.

Sentencing Principles:

14. In sentencing, the classic principles of sentencing such as punishment, deterrence, and rehabilitation must always be taken into account and weighed against each other.
15. It is important to note that the Court may rely on precedents to assist it in determining the appropriate sentence, however, each case should be determined in accordance with its own facts and circumstances.
16. In the case of *Kemahaku v Regina* [2011] SBCA 21; CA-CRAC 16 of 2011 (25 November 2011)² the Court of Appeal imposed a sentence of seven (7) months imprisonment. The Court of Appeal stated that:

*The nature and circumstances of assaults are so varied that most cases turn on their particular facts with the result that earlier cases are, therefore, unlikely to give much assistance.*³
17. In the case of *Kilatu v Regina* [2005] SBHC 118; HCSI-CAC 206 of 2004 (22 September 2005)⁴, the High Court sentenced the offender to twelve (12) months imprisonment.

² *Kemahaku v Regina* [2011] SBCA 21; CA-CRAC 16 of 2011 (25 November 2011)

³ *Kemahaku v Regina* [2011] SBCA 21; CA-CRAC 16 of 2011 (25 November 2011)

⁴ *Kilatu v Regina* [2005] SBHC 118; HCSI-CAC 206 of 2004 (22 September 2005)

18. The sentencing trend for the offence of assault occasioning bodily harm contrary to section 245 of the *Penal Code* [Cap 26] depends very much on the circumstances of each case, and the more serious the harm, the likely the sentence will increase towards the maximum.
19. It is the duty of this court to issue a sentence which is proportionate with the magnitude of the offence, and to make it clear that it is against the laws of this country especially the *Penal Code* [Cap 26] to assault and cause harm to another person. His actions had caused injuries or bodily harm to the victim.
20. A medical report dated 20th March 2019, produced by Dr Leslie Bunabao who was the dentist in charge at the Tulagi Hospital⁵, stated that the :

Patient sustained injury to his lower lip and lower anterior teeth after being hit with a metal steel rod to his chin by another friend.

21. The said report also described the nature and site of the injury as follows:

Infected lower lip due to injury, covered with white patches due to inflammation. Avulsion of tooth (31), tooth mobility-41, 42. Slightly pain upon palpation on left TMJ, mouth occlusion is normal.

22. The *Penal Code* [Cap 26] defines harm as “...means any bodily hurt, disease or disorder whether permanent or temporary.”⁶
23. I am satisfied that the victim suffered bodily harm which is consistent with the definition of “harm” in the *Penal Code* [Cap 26].

Starting Point

24. After having considered the circumstances of the present case, and the aggravating and the mitigating factors, it is my considered view that the starting point of twenty-four (24) months is relevant for this present case.
- *Early Guilty Plea and Remorse.* I note that the defendant entered an early guilty plea which shows that he is remorseful and I give him credit for that. I deduct six (6) months for the early plea.
 - *First time offender.* Mr Hoka is a first-time offender and I deduct two (2) months.
 - *High Chance of Rehabilitation.* Mr Hoka is in his 20s and has a high chance of rehabilitation, and I deduct another two (2) months.
 - *Compensation.* In addition to that, I also take into account the fact that he paid a compensation of SBD 200 to the victim. On the 19th October 2019 at Koilovalala village, the defendant and the victim conducted another reconciliation ceremony and the defendant paid an amount of SBD 2000 to the victim. The victim also paid SBD 500 cash to the defendant. I give credit to the defendant and I deduct one (1) month. In fact, during the negotiations in the course of the plea

⁵ Medical Report dated 20th March 2019, by the Tulagi Hospital (Per the Dentist in charge Dr Leslie Bunabao).

⁶ *Penal Code* [Cap 26], Definitions

deal, a condition was that the defendant ought to pay a compensation to the victim before the proposal to reduce the charge was accepted.

- *Family responsibilities.* Mr Hoka is a married person with two children and he is responsible for their welfare. He is a bread winner who also supported his family, and I deduct another one (1) month.

25. After having considered the aggravating and mitigating factors, and also having taken into consideration the core sentencing principles such as punishment, deterrence and rehabilitation, I am of the opinion that a term of twelve (12) months of imprisonment is appropriate for the circumstances of this case. I therefore sentence Mr Hoka to a term of 12 months imprisonment effective as of today.

26. I have considered whether to suspend the sentence, section 44(2) of the *Penal Code* [Cap 26]⁷ provides as follows:

(2) The provisions of subsection (1) of this section shall not apply where the offence involved the use or the illegal possession of a weapon.

27. Section 44(2) of the *Penal Code* is unambiguously clear and the use of the weapon prevents me to suspend the sentence.

28. In *Kemakeha –v-Regina*⁸, the Crown appealed to the High Court against the sentence that was imposed by the Magistrates Court on the basis that the learned magistrate erred when he imposed a suspended sentence in breach of section 44 (2) of the *Penal Code* [Cap 26] and sought an order ‘that the suspended sentence be substituted with a custodial sentence’. The High Court held that that order to suspend the sentence was in breach of section 44(2) which prohibits the suspension of a sentence of imprisonment where the offence involved the use or possession of a weapon.

29. The Court of Appeal in *Kemakeha-v-Regina*⁹, also found that the Magistrates order for suspension of the sentence was an “...error...” and commented as follows:

Any person who uses a weapon to assault an unarmed victim must expect to receive a sentence of immediate imprisonment.

30. Moreover, the injury or harm sustained which eventually caused the loss of a tooth shows that the assault done with the use of the steel rod was quite a serious one, and must be considered as an aggravation.

31. The courts have voiced these same sentiments with respect to the need for people to solve their problems peacefully, time and again. I will do so once more. People should try and sort out their problems in a peaceful manner. There are many avenues such as the chiefs, elders, community and church leaders,

⁷ *Penal Code* [Cap 26], s 44(2)

⁸ *Kemahaku v Regina* [2011] SBCA 21; CA-CRAC 16 of 2011 (25 November 2011).

⁹ *Kemahaku v Regina* [2011] SBCA 21; CA-CRAC 16 of 2011 (25 November 2011)

and police where people can utilize to mediate and help solve such problems amicably other than committing such unlawful actions.

32. People who take the law into their own hands and without any lawful excuse, should be punished for their actions. The present offender is no exception and he shall face the consequences of his actions.
33. The sentence should be a lesson to the offender, and also to send a message of deterrence to the general public not to involve in such criminal activities and particularly not to assault and harm others.

Orders

34. The Orders of the Court are as follows:

- 1] **The offender Mr Collin Hoka is sentenced to a term of twelve (12) months imprisonment effective as of today.**
- 2] **Time spent in custody, if any, shall be taken note of and properly deducted.**
- 3] **Right of Appeal within 14 days.**


PRINCIPAL MAGISTRATE FELIX HOLLISON
THE COURT