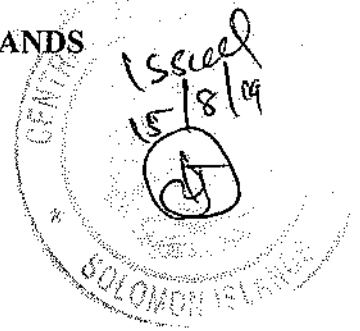


**IN THE CENTRAL MAGISTRATES COURT OF SOLOMON ISLANDS
AT TULAGI**

(Criminal Jurisdiction)

Criminal Case No: 529 of 2019

REGINA



-V-

CHARLES LOLI

Coram: HOLLISON F (PRINCIPAL MAGISTRATE)

Appearances:

Mr J. Saugaro and E. Kangea for the Crown (CIP Police Prosecutions)

Mr F. Kama of Public Solicitors Office for the Defendant

Date: 18 July 2019.

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

SENTENCE

1. The Defendant, Mr Charles Loli was charged with one count of Simple Larceny contrary to section 261(1) of the *Penal Code* [Cap 26], and two counts of Criminal Trespass contrary to section 189(2) of the *Penal Code* [Cap 26].
2. Mr Loli pleaded guilty to the said charges earlier this afternoon, and I now enter a conviction against him.
3. The offender agreed with the summary of facts.

Facts

4. On or about 22nd July 2017 between 2400hrs-0100rs, at Toga Village, Ward 2, in Central Islands Province, the offender approached the victim's kitchen, and this was observed by the victim who was still awake at his house, and he watched the offender from a distance of around two meters. The offender then took a half bag of rice from the victim's kitchen, and moved towards the veranda of the victim's house. The offender took some clothes from the victim's black bucket which include 2 female bra, 2 sport black pants, and one shirt. The offender also took two pieces of clothes (*lavalava*). After having

observed what the offender has done, the victim then shouted to the offender as follows "...you wait for me, why did you do this to me..." The offender, however, escaped with the stolen clothes.

5. Moreover, on the same date, at approximately between 0230hrs-0400hrs, the defendant entered the victim's residence again, and touched the victim's two daughter's namely Melanie Pasataboa and Tania Noni. The offender escaped but was intercepted by Simon Peter Voa, and later he escaped to the main village.
6. These incidents were reported to the Royal Solomon Islands Police Force at Tulagi and the offender was arrested on 25th July 2017. He was then charged for simple larceny contrary to section 261 of the Penal Code [Cap 26], and two counts of criminal trespass contrary to s 189(2) of the *Penal Code* [Cap 26].

Discussion and Analysis

7. Section 261(1) of the *Penal Code* [Cap 26]¹ provides as follows:

261.-(1) Stealing for which no special punishment is provided under this Code or any other Act for the time being in force is simple larceny and a felony punishable with imprisonment for five years.

8. The maximum sentence of imprisonment of five years shows that the crime of simple larceny is quite a serious crime.

Aggravating Factors

9. The aggravating factors are as follows:

- 1) The offender committed the offence at night;
- 2) The items were not recovered;
- 3) The offender after committing the offence of criminal trespass, went on and stole the said goods and properties;
- 4) The offender also entered the victim's house twice at night.
- 5) He also touched the victim's daughters showing other hidden motives.

10. The mitigating factors are as follows:

- 1) He pleaded to the charges in the first available opportunity and saves the court's time and resources;
- 2) He had no criminal conviction.
- 3) He had attempted to reconcile with the victim.
- 4) He expressed his remorsefulness in court.
- 5) He cooperated with the Police in the course of investigation.
- 6) The defendant although an adult, he is twenty five (25) years old. He is single and has the chance to rehabilitate.
- 7) He is an active member of his church.

Count 1: Simple Larceny-Contrary to s 261(1) of the Penal Code.

¹ *Penal Code* [Cap 26]

11. I am satisfied that a starting point of nine months is appropriate for this case. I take into account his early guilty plea which shows his remorsefulness and it saved the court's resources and time and I deduct three (3) months. I also take into account the mitigating facts including the fact that he is a first time offender, the offender cooperated with the Police, he had prior no criminal conviction, he is an active member of his denomination, and he is still twenty five years which means he can still rehabilitate and become a better citizen, and I deduct 3 months. The sentence for this offence of simple larceny is three (3) months.
12. The stolen goods were not returned and I consider this as an aggravating factor. Therefore, this present case is distinguishable to the case of *Eapa v Reginam* [2001] SBHC 77; HC-CRC 248 of 2001 (2 November 2001).² In the case of *Eapa*, the learned Magistrate issued a sentence of 9 months imprisonment for an offence contrary to section 261 of the *Penal Code* [Cap 26], however, when it was appealed to the High Court, the sentence was still upheld but the learned Judge ordered that it be suspended for two years under section 44(1) of the *Penal Code* [Cap 26] primarily because the stolen goods were recovered.

Count 2: Criminal Trespass contrary to s 189(2) of the Penal Code

13. Section 189(2) of the *Penal Code* [Cap 26]³ provides as follows:

(2) Any person who enters by night any dwelling-house, or any verandah or passage attached thereto, or any yard, garden or other land adjacent to or within the curtilage of such dwelling-house, without lawful excuse, is guilty of a misdemeanour, and shall be liable to imprisonment for one year.
14. The maximum sentence for criminal trespass contrary to section 189(2) is one year imprisonment.
15. On 22nd July 2017, at 12:00am midnight, the offender committed the offence of criminal trespass contrary to s 189(2) of the *Penal Code* [Cap 26].
16. In the case of *Regina v Laufalu* [2017] SBMC 49; Criminal Case 921 of 2013 (5 October 2017).⁴ The defendant was sentenced to one month for Criminal trespass contrary to section 189 (1)(a) of the *Penal Code*, and two months for consumption of liquor in public place contrary to section 65 of the *Liquor Act*.
17. In the case of *R v Keleni* [2019] SBMC 10; Criminal Case 461 of 2013 (14 February 2019)⁵, the offender was sentenced to three months for criminal trespass contrary to section 189(2) of the *Penal Code* [Cap 26].
18. I am of the view that a starting point of four (4) month imprisonment is appropriate in this case. I deduct 1 month for the early guilty. I also consider all the mitigating factors which include, no previous conviction and first time offender, and together with the other mitigating factors, and further deduct

² *Eapa v Reginam* [2001] SBHC 77; HC-CRC 248 of 2001 (2 November 2001). Per Kabui J, as he then was.

³ *Penal Code* [Cap 26], s 189

⁴ *Regina v Laufalu* [2017] SBMC 49; Criminal Case 921 of 2013 (5 October 2017).

⁵ *R v Keleni* [2019] SBMC 10; Criminal Case 461 of 2013 (14 February 2019)

two months. I think the sentence of one month imprisonment is appropriate for the second count which is criminal trespass.

Count 3: Criminal Trespass contrary to s 189(2) of the Penal Code

19. On 22nd July 2017, at around 0400hrs (4am), the offender entered the home of the victim again. The repetition of criminal trespass in these scenarios on the same day, is an aggravating feature as well. I am of the view that a starting point of four (4) months is appropriate for this case. I deduct one month for the early guilty plea which saves the court's resources and time. I also consider all the other mitigating factors and further deduct two months. Since the offender committed the offence of criminal trespass by entering the same house of the victim again at around 4am which I consider as very serious because of did that twice in the same night. I add another one month to it to show the court's denunciation of such actions. Therefore, the sentence for count three (3) is two (2) months.

Conclusion

20. The sentences imposed for the three counts should be served concurrently. This is because they arose from the same transaction.
21. Entering other people's home without permission or lawful excuse coupled with stealing or simple larceny are criminal acts and anyone who committed such offences will face the full force of law.
22. The sentences imposed should serve as a personal deterrence to the offender and the general public.

Orders

23. I therefore issue the following orders:

- 1] **The offender is sentenced to three months imprisonment for the first count contrary to s 261 of the *Penal Code* [Cap 26].**
- 2] **The offender is sentenced to one month imprisonment for the second count and two months imprisonment for the third counts contrary to section 189(2) of the *Penal Code* [Cap 26].**
- 3] **These sentences are to be served concurrently, and the total sentence is three months imprisonment.**
- 4] **Right of Appeal within 14 days.**

PRINCIPAL MAGISTRATE FELIX HOLLISON
THE COURT

