

**IN THE CENTRAL MAGISTRATES' COURT
OF SOLOMON ISLANDS**

CRIMINAL JURISDICTION

CMC-CRC No. 1253 of 2018

REGINA

V

MARTIN POLAU

Date of Sentence hearing: August 12, 2019

Date of Sentence: August 13, 2019

Constable Pitasua for Prosecution

Mr Pulekera for the Defence



SENTENCE

INTRODUCTION

1. On 12th August 2019, Mr Martin Polau pleaded guilty to the charge of malicious damage contrary to section 326 (1) of the *Penal Code*. I now convict him of the charge.

MAXIMUM PENALTY

2. The maximum penalty of the offences is 2 years imprisonment.

FACTS

3. Around 4 am on 10th November 2018, the Mr Martin Polau, the Offender was drunk and behaved aggressively along the road of marble street, Tuvaruhu. He shouted aloud wakening the sleeping Complainants, Albert Ilala and Paul Gelua. At that time there were two vehicles stationed beside the road. A white short boot car with registration number MA3232 that belonged to Paul Gelua and a Mitsubishi Pajero with registration number MA5743 that belonged to Albert Ilala. The Offender picked up a rock and threw it at that white car damaging the front left side mirror. He picked another rock and threw it at the back screen glass of the Pajero vehicle, damaging the screen glass. He then picked up a ladder and threw it down to the ground. The Complainants later had their damaged vehicles valued. The damage of the white car was \$600 and the Mitsubishi vehicle \$5,495.

COURT'S ANALYSIS

Aggravating Factors

4. Night aggravates the offending. The offending occurred at a time when people are asleep. Even if the Complainants were awake, the offending happened quickly to give them little time to try and interfere with the Accused's actions. The cover of night is used to facilitate the Offender from recognition. As it was dark, it is dangerous as the rock thrown to the vehicles may have missed the vehicles and randomly hit an innocent sleeping resident. The result may be devastating.
5. Using rocks to damage the vehicles. I pause to consider whether I could use it as an aggravating feature. Simply, weapons are things used to cause bodily harm or damage. The rock can cause injury if it missed the vehicle and randomly hit a sleeping resident. The rock was used to cause damage to the vehicles. If the Offender had used a gun, it would have been more serious as the gun is considered very dangerous weapon. Thus the rock is a weapon that aggravates the offending. Weapon used or in possession during an offending makes the case serious.
6. Intoxication is an aggravating factor. From the circumstances of the cases, it is clear that the Offender was drunk and was erratically behaving to cause the damages. I can confidently say that the Offender behaved that way he did because he was drunk. He was out of his self-control.
7. The Offender acted recklessly and without provocation. This aggravates the offending. He has no care attitude. He has no respect on other people's property. The laws are there to ensure we live well with each other. Wilful actions to damage other's property without any cause is serious. This shows attitude problem. Imagine if others walk to your property and just damage them without any reason?

Mitigating Factors

8. I have observed the Offender's demeanour. He has behaved regrettably. He has shown remorse. He pleaded guilty at the first instance. He has saved the time of the court and parties. I will factor this in my sentence.
9. Credit must also be given to the Offender as he is a first time offender.
10. The Offender has a family dependent on him. He has children at school awaiting for his obligations in meeting school fees and other expenses for their welfare and wellbeing. I will have this reflected in the sentence

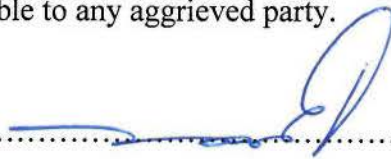
Court Sentence

11. I have considered well the submissions by the parties. I must say the offending is immature for an adult who is over 40 years old. You should have thought of your children and the situation and being in custody. I have also noted that you were put in custody for a WOA because you did not attend court. It is my considered view that the starting point of the offending is twelve months imprisonment. Take away one third of the guilty plea leaves 8 months imprisonment. I will take away 2 month for the other mitigating factors. 6 months is left.

12. The Offender will have to correct the wrong he has done therefore, I will order him to pay compensation on the victims exactly on the cost of damages. \$600 to Paul Gelua and \$5,495 to Albert Ilala. For that I will invoke section 27 of the *Penal Code*. In doing that I will have the Offender serve two months imprisonment and for the other four months imprisonment, it is substituted with the compensation. I also see that the two months imprisonment is substantially served and will release the Offender at the rising of the court. Therefore, he will only be left to deal with his compensation.

ORDERS

13. Impose a sentence of one 6 months imprisonment.
14. Direct that 2 months to be served in imprisonment and the 4 months imprisonment be substituted to compensation.
15. Direct that the compensation of \$600 to be paid to Paul Gelua and \$5,495 to be paid to Albert Ilala before 1st October 2019.
16. Direct that the RSIPF witness the compensation and provide a certificate of proof of the compensation to the Court before 1st October 2019.
17. In default of compensation, the Offender will be issued with a WOA and if arrested he will be remanded to serve 4 months imprisonment.
18. Direct that the Offender be released at the rising of the Court, noting that he would have spent a substantial part of his sentence as at this point in time.
19. 14 days to appeal is available to any aggrieved party.



THE COURT

Ishmael Kekou – Magistrate First Class

