

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

CRIMINAL JURISDICTION

CMC-CRC No. 333 of 2019

REGINA

V

WINSTON MEAIO

Date of Sentence hearing: September 11, 2019

Date of Sentence: September 12, 2019

Mr Tonowane and Mr Taupongi for Prosecutions

Mr Pulekera for the Defence

SENTENCE

Introduction

1. Mr Winston Meaio, the Accused, appeared before the court with two counts:

Count one: Unlawful assembly contrary to section 74 of the *Penal Code*.

Count two: Riot contrary to section 75 of the *Penal Code*.

2. He was arraigned on the charges and pleaded guilty to both. I convict him accordingly.

Maximum Penalty

3. The maximum penalty of the offences are:

Count one: maximum penalty of one year.

Count two: imprisonment term not exceeding two years or with fine or with both.¹

Facts

4. The essential facts are sometimes between 11 am, on 24th April 2019, the Offender was seen amongst a group of people who were disgruntled at the election of the new Prime Minister. This

¹ See section 75 of the *Penal Code* to be read with section 41 of the *Penal Code*.

was at China Town area in conjunction with the Koloale road. The group shouted and threw rocks to Police Officers. The Offender used a David sling to attack the Police with.

Aggravating Factors

5. It makes the case serious when the Offender has in possession a weapon and used it to attack the Police. A David sling is a dangerous weapon. It is a sling with a pouch and two long chords attached to it. It can cause devastating damage or even death. As a Christian Nation, the story of David and Goliath is a popular story where such a sling was used to kill Goliath. A giant. Imagine how the sling could do damage to the brave Police Officers trying to save private and public property. The facts did not disclose any injury or damage caused by the Offender. I will consider this to be in the benefit of the Offender. However, the possession and use of sling aggravates the offending.

Mitigating Factors

6. Took an early plea. From my observations in court, he seemed to be remorseful. Couple that with the guilty plea, it shows that he is bound to be a changed person and will.
7. First time offender. That the Accused was a law abiding citizen until he was arrested.
8. His personal circumstances. He is a young person and has elderly parents who he supports.

Court Sentence

9. Before venturing into the court's sentence, I must first address an issue. Duplicity! The facts stated that both unlawful assembly and rioting happened at around at 11am. At one time. The facts did not say Unlawful assembly occurred at a time different to rioting. Therefore, I take it that at around 11am, both offending occurred. Then, I question, how can unlawful assembly and rioting happen at the same time? It is my considered view that unlawful assembly is different from rioting. Rioting is actually an aggravated unlawful assembly. Because unlawful assembly is the grouping of people together with intentions to offend. And when the group behaves riotously they commit rioting. See sections 73 of the *Penal Code*. Duplicity is where one offence must only have one count or charge.² Or it can happen where the two counts arise from the same action or transaction. It is not duplicitous where two charges arise from a transaction but has two sets of actions. For example for unlawful assembly and rioting it would not duplicitous if the Offender first joined a group of persons who unlawfully gathered together with the intention to commit an offence and then later turned riotous to cause damages to the public and private property. In this case, the facts did not spell out how unlawful assembly transformed to rioting. It is duplicitous, in my view, where the Offender was charged for unlawful assembly and at same time of the circumstances be charged for rioting. For that I will strike out the charge of rioting for bad of duplicity. As a result, I will vacate his guilty plea and conviction and acquit the Offender of rioting. However, I will maintain the conviction for unlawful assembly and sentence him accordingly.
10. I must say to the Offender that the public interest is bitterly in discontent in such offence. This is the peoples' court where I will exercise their powers which I have been bestowed upon to do.

² See *Director of Public Prosecutions v Dunn* [2001] 1 CrAppR 352 Bell J, with whom Pill LJ concurred at page 357.

11. On 24th April 2019, the election of Prime Minister caused disagreement throughout Honiara. People resorted to unlawful assembly and rioting. We have had a similar incident in the past where china town was torched and looted of the businesses. I can say that on 24th April 2019, it almost reached that level save for the brave Royal Solomon Islands Police.
12. Expressing one's freedom against any Leader can be done lawfully and effectively. The Offender chose the illegal way resulting him in detention.
13. Section 44(2) of the *Penal Code* clearly stipulates that where a weapon is in possession or is used during the offending, suspension of the sentence is no alternative. Detention is a must, in other words.
14. I have considered your mitigation and the aggravating factor. Also, the community and this court condemns the offending. Deterrence, therefore, must be factored.
15. After considering all, the sentence is 6 months imprisonment.
16. I have considered the pre-detention period of about 4 months 19 days. And applying the case of *R v Taumasuna*³, where a one third of the sentence is deducted, the Offender will be considered to have served adequately his term. He will be released at the rising of the court.

ORDERS

17. The Offender's conviction for rioting is vacated permanently for bad of duplicity to the offence of unlawful assembly.
18. The Offender is sentenced for unlawful assembly to 6 months imprisonment.
19. The six months imprisonment adequately served by the pre-detention period of 4 months and 19 days.
20. The Offender is to be released from the custody at the rising of the court.
21. Right of Appeal to any aggrieved party within 14 days of this sentence judgement.

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THE COURT

Ishmael Kekou – Magistrate First Class



³ HCSI-CRC 505 of 2016.