

IN THE HONIARA CENTRAL MAGISTRATES COURT DISTRICT OF
SOLOMON ISLANDS
(Criminal Jurisdiction)



CRIMINAL CASE NO.613 of 2020

BETWEEN:

REGINA

Complainant

AND:

PAUL RICHARD HUBBARD

Defendant

*Before: Emma Garo Chief Magistrate
Mr. Andrew Radclyffe for the defendant
Ms Rachel Olutimayin Director Public Prosecutions for
the Crown*

*Date of hearing: 23rd June 2020
Date of Sentence: 25th June 2020*

Sentence

INTRODUCTION

1. The defendant pleaded guilty to 1 count of Prohibition of entry of non-citizen, contrary to clause 4 of the EMERGENCY POWERS (COVID-19) (Prohibition of Entry of Non-Citizens) Order 2020 and Regulations 8(1)(2) and 3 of the Emergency Powers (Covid-19) Regulations 2020.
2. Regulation 8(1)(2) and (3) of the Emergency Powers (Covid-19) Regulations 2020 reads:

"(1) The Prime Minister may, by Order, prohibit a person or a class of person from entering into Solomon Islands during the emergency period.

(2) The Prime Minister may, by Order, specify a person or a class of persons who may enter Solomon Islands to carry out a humanitarian purpose despite the prohibition.

(3) A person who contravenes the Order commits an offence.

Maximum penalty: 10,000 penalty units or imprisonment for 5 years, or both."¹

3. Order 4 of Emergency Powers (Covid-19) (PROHIBITION OF ENTRY OF NON-CITIZENS) ORDER 2020 reads:

"A non-citizen is prohibited from entering Solomon Islands during the emergency period."²

AGREED FACTS

"The defendant Mr Paul Richard Hubbard is 59 years old and is an Australian National. He is a pilot and provides helicopter and air taxi services under the business name "Helicopter Support Solomon Islands Limited.

On the 10th of May 2020 he flew to Vanuatu to Solomon Islands on AS350 Squirrel Helicopter registered in Solomon Islands as H4-EGH to assist in delivering relief supplies after Cyclone Harold hit Vanuatu.

On 22nd May 2020, defendant Mr Paul Richard Hubbard flew from Vanuatu and came back into the Solomon Islands on that same helicopter registered as H4-EGH.

¹ Regulation 8(1)(2) and (3) of the Emergency Powers (Covid-19) Regulations 2020.

² Order 4 Emergency Powers (COVID-19) ORDER 2020

He was not granted an exemption to enter into Solomon Islands by the Prime Minister's Office or the (Covid-19) Oversight Committee when he returned to Solomon Islands on the 22nd May 2020.

Upon his arrival in Solomon Islands he was placed in Quarantine.

After being quarantined, he was interviewed by the police for breaching an order made by the Prime Minister on 27th March 2020 in relation to prohibition of entry of non-citizens into Solomon Islands during the State of Emergency."³

MITIGATING FACTORS

Guilty Plea

4. The defendant pleaded guilty at the first opportunity. In pleading guilty, he has saved the court's time, and resources from having to conduct a trial. A guilty plea is a powerful mitigating factor to reduce sentence. A guilty plea has always been given due recognition by the courts by way of reduction in sentence.

First offender

5. The defendant is a first offender. This is his first brush with the law and at 59 years old. This shows that he is a law abiding person and as such he is entitled to a reduction in sentence for his prior good behaviour. I give him credit for his prior clean record by way of reduction in sentence.

³ Refer to agreed facts filed with Court on 23rd June 2020.

Personal Circumstances

6. The defendant is married with 4 children aged 12, 10, 7 and 18 months old. His wife and four children live at their home in Queensland, Australia. Whilst, he has been away, his wife has had to cope on her own with home schooling and caring for their children in the COVID-19 restrictions in place in Australia. He informed the court that he wants to return home to be with his family because he had been away from family for far longer than he had expected.

History in the Solomon Islands

7. The defendant first came to Solomon Islands in 2004 as an employee of Bristow Helicopters who had a contract with RAMSI to operate in the country.⁴ The defendant saw the need for a helicopter service in the Solomon Islands and so in April 2006 he incorporated the company called Helicopter Solomon Islands Support Services.⁵ The defendant is the sole shareholder and director of the Company. The Company employs his brother Garry Hubbard who is also a helicopter pilot and at the moment they are the only two helicopter pilots available.⁶

8. The main work that the defendant's company does in the Solomon Islands is providing support for RSIPF/AFP and the Ministry of Health and Medical Services, including Medivac operations for NRH. Search and rescue is also another major service that the Company owned by the defendant provide to the nation.⁷ For instance, in April 2020, during the Taimareho tragic incident the defendant was in quarantine.⁸ The Prime Minister's Office had him released from quarantine so that he could assist in the search for the people lost

⁴ Refer to paragraph 2 of statement of Paul Hubbard

⁵ Refer to paragraph 3 of statement of Paul Hubbard

⁶ Refer to paragraph 3 of statement of Paul Hubbard

⁷ Refer to paragraph 5 of statement of Paul Hubbard

⁸ Refer to paragraph 5 of statement of Paul Hubbard

overboard from Cyclone Harold.⁹ The Company owned by the defendant also transport by Helicopter phone towers for Solomon Telekom and Bemoible and continues to support them.¹⁰ The Company owned by the defendant also provide services for mining and prospecting companies in Solomon Islands.¹¹

9. From the statement provided to the Court by the defendant, it is clear that Company Incorporated by the defendant provide a wide range of Helicopter Services to different members of the Business Community in Solomon Islands, the Government and other agencies, and that the Company does have a great working relationship with the business community and is highly respected in the field of its expertise and speciality.

Circumstances giving rise to the offending by the defendant.

10. On 26th April 2020 the Government of Vanuatu contacted the defendant's company to deploy their Helicopter to assist with cyclone relief in Vanuatu. Vanuatu Civil Aviation Authority granted permission for the Company to operate in Vanuatu.¹²

11. The defendant telephoned Mr. Robson Djokovic, Chief of staff in the Prime Minister's Office, and informed him that they were urgently needed in Vanuatu and hoped to be back in one week.¹³

12. On 27th April 2020, the defendant and his one member crew left for Vanuatu and remained there for four weeks delivering food, supplies and medical staff to administer treatment in the affected areas.¹⁴

⁹ Refer to paragraph 5 of statement of Paul Hubbard

¹⁰ Refer to paragraph 6 of statement of Paul Hubbard

¹¹ Refer to paragraph 7 of statement of Paul Hubbard

¹² Refer to paragraph 8 of the statement of Paul Hubbard

¹³ Refer to paragraph 9 of the statement of Paul Hubbard

¹⁴ Refer to paragraph 9 of the statement of Paul Hubbard

13. On the 20th May 2020, Garry Hubbard emailed Dr Alex Munamua of the Ministry of Health and Mr. Robson Djokovic, advising them of the return flight, the people on the flight and arrival time at Henderson Airport.¹⁵

14. On 20th May 2020, the defendant filed a flight plan for the return trip with Civil Aviation in Vanuatu and Solomon Islands. The defendant obtained clearance from Vanuatu authorities before departure.¹⁶

15. The return flight to Honiara was conducted on 30 minute schedules with a seamless handover from Vanuatu authorities to the Honiara Flight Region with up to date estimates of their arrival time in Honiara.¹⁷

16. On Landing at Henderson Airport on 22nd May 2020, the defendant contacted the Ministry of Health and he and his crew member were told to go to arrivals to complete arrival/Covid-19 documentation.¹⁸ After completing arrival/Covid-19 documentation the defendant and his crew were requested to remain at the terminal for about 2 hours before they were instructed to go back and remain with the helicopter until Ministry of Health Officials arrived.¹⁹ The defendant and his crew member waited until they were picked up by Dr Alex Munamua and transported to the GBR quarantine station.²⁰

¹⁵ Refer to paragraph 11 of statement of Paul Hubbard

¹⁶ Refer to paragraph 13 of statement of Paul Hubbard

¹⁷ Refer to paragraph 14 of statement of Paul Hubbard

¹⁸ Refer to paragraph 15 of statement of Paul Hubbard

¹⁹ Refer to paragraph 15 of statement of Paul Hubbard

²⁰ Refer to paragraph 15 of statement of Paul Hubbard

17. The defendant had booked a flight to travel to Brisbane on 27th May 2020. He was informed by officials from Ministry of Health that they would facilitate his departure from Quarantine to the airport but was later told that there were problems with facilitating his release from quarantine.²¹

18. Mr Garry Hubbard did manage to speak with Chief of Staff Robson Djokovic who said it was not a health issue but a police matter.²² The defendant in his statement said that he was later informed by Deputy Commissioner Ian Bara that he was banned from leaving the country.²³

19. The defendant was released from quarantine on 16th June 2020. The defendant in his statement said that he has had discussions with the CAASI director and CAASI Director confirmed to him that as far as he was concerned there were no other breaches or other issues.

20. The defendant in his statement to the court said that before he left Vanuatu on 22nd May 2020, he was aware that there were restrictions on any commercial flights arriving into the Solomon Islands but he assumed that as his company provides what he calls an important service and that he was returning from humanitarian work in Vanuatu, which is a Covid-19 free country, that he had given 2 days' notice to the Prime Minister's Office and the Ministry of Health that it was alright for him to return to Solomon Islands on the 22nd of May 2020. The defendant in his signed statement provided to the Court, explained that at no time before he left Vanuatu on 29th April 2020 was he told by any Solomon

²¹ Refer to paragraph 16 of statement of Paul Hubbard

²² Refer to paragraph 18 of the statement of Paul Hubbard

²³ Refer to paragraph 18 of statement of Paul Hubbard

Islands Government Official that he would need a special permit to return to Honiara.

21. On 22nd May 2020, when the defendant arrived at the Henderson Airport, he was cleared by Solomon Islands Immigration to enter the Country.

Ignorance of the law is no excuse

22. Mr Radclyffe correctly points out that ignorance of the law is no excuse and that this offence is a regulatory offence. Equally, there is no legal obligation on the Government Officials to inform the defendant that he needs a permit from the Prime Minister under Order 4 of the Emergency Powers (Covid-19) (PROHIBITION OF ENTRY OF NON-CITIZENS) ORDER 2020 to enter country. Being a strict liability offence, it is accepted that entering the Country without being exempted by the Prime Minister, the defendant has breached the Order 4 of the Emergency Powers (Covid-19) (PROHIBITION OF ENTRY OF NON-CITIZENS) ORDER 2020.

23. Mr Andrew Radclyffe however submits that the charge against the defendant should be dismissed and the defendant discharged absolutely under section 35 of the Penal Code Cap 26.

24. Mr Andrew Radclyffe submits that, firstly the defendant entered the Country from Vanuatu a Covid-19 free Country. Therefore, there is in fact no chance of the defendant bringing in the Covid-19 virus into the country. In his statement provided to the Court, Mr Hubbard had been in Vanuatu a Covid-19 free country for about a month prior to his return on the 22nd May 2020.

25. Mr Radclyffe also relied on the report of Dr Alex Munamua. Dr Munamua in his report said Mr Hubbard was first seen upon his arrival from Australia on the 25th March 2020 to help with

Covid 19 and also search and Rescue team.²⁴ In his report Dr Munamua said that after spending only 10 days in quarantine Mr Hubbard was instructed to be part of SIMSA cyclone search and rescue, thus completed his IQF in an assessed isolation place at the Lunga banks until finishing it off on the 8th April 2020.²⁵ Dr Munamua confirmed that the defendant upon his return from Vanuatu was quarantined for 25 days from 22nd May 2020 until his discharge on 16th June 2020. Dr Munamua confirmed that the defendant was tested on 30th May 2020 for Covid -19 which was negative.

26. Mr Radclyffe submits that the reason why section 35 of the Penal Code Cap 26 would be appropriate to be exercised by the court in this case, is because there are extenuating circumstances that exist in this case and that it is not a submission that he makes lightly. Mr Radclyffe submits that he does not for 1 minute take lightly the Learned Director for Public Prosecutions submissions about the seriousness of the offence and the penalties provided for its breach.

27. Mr Radclyffe however submits that there are unique circumstances that exist in this case to justify the court taking the sentencing approach provided for under section 35 of the Penal Code Cap 26.

28. In response to the submissions by Mr. Radclyffe, Director Public Prosecution submits that since 25th February 2020, Aeronautical Information Service has issue 8 Notices to Airmen (NOTAM) with the last NOTAM notice issued on 29th March 2020. Mr Radclyffe submitted that the defendant was in quarantine 25th March 2020 to 8th April 2020. The effect of this aspect of the

²⁴ Refer to paragraph 1 of report by Dr Munamua dated 22nd June 2020

²⁵ Refer to Report provided the Dr Munamua, dated 22nd June, 2020

submission by Mr Radclyffe is that, at that time the last NOTAM notice was sent out, the defendant was in quarantine. The prosecution did not clearly set out the dates on which the other 6 NOTAM notices had been issued by Air Traffic Services. The Last NOTAM notice was issued on 29th March 2020. The Emergency Powers (Covid-19) (PHROHIBITION OF ENTRY OF NON-CITIZENS) ORDER 2020 was gazetted on 27th March 2020. The defendant went into quarantine on 25th March 2020. The Crown had not shown the relevance of the NOTAM notices issued, with the failure by the defendant to get obtain an exemption from the Prime Minister to enter the country.

29. Mr Radclyffe further submitted that the defendant is a helicopter pilot who had been living and working in the Solomon Islands for 16 years and is in the process of applying for dual citizenship. Mr Radclyffe submitted that whilst it is true that the defendant did not obtain an exemption, under the regulation, being a strict liability offence, the defendant is guilty.

30. Learned Counsel Mr Radclyffe however submits that, the defendant did comply with all the other requirements of the law both in Vanuatu and in the Solomon Islands except for the exemption from the Prime Minister. The upshot of the submission by Mr. Radclyffe is that, but, for the current State of Emergency, Regulations and Emergency Powers (Covid-19) (PHROHIBITION OF ENTRY OF NON-CITIZENS) ORDER 2020, what the defendant did would not have been an offence.

31. Mr Radclyffe had provided the court with a copy of the Judgment of the High Court in Civil Case number 276 of 2018 where Helicopter Support Solomon Islands Ltd is the claimant against the Government. The High Court in civil case number 276 of 2018 made orders against the Government in

favour of Helicopter Support Solomon Islands Limited, the Company incorporated and owned by the defendant. The entering of a conviction against the defendant, in this case, submits Mr Radclyffe, is capable of having far outreaching consequences on the defendant personally because being a non-citizen he runs the risk of being deported if a conviction is entered against him.

32. On the issue of the defendant facing the risk of being deported, if a conviction is entered against him by this court, I hold the view, that this is not a matter relevant to be taken into consideration. The decision on whether or not to deport a non-citizen rests with the responsible Minister, and that is a matter best left to be dealt with by the appropriate authorities at the relevant time.

33. In response to the submissions by Mr Radclyffe, Director Public Prosecution Ms Olutimayin referred the court to subsection (2) of section 24 of the Penal Code Cap 26 which gives the discretion for a sentencing Magistrate to impose a shorter term of imprisonment instead of the prescribed maximum imprisonment sentence and subsection (3) of the same section which provides that a person liable to a term of imprisonment may be sentenced to pay a fine in addition to or instead of imprisonment.

34. Ms Olutimayin submitted that an aggravating feature in the commission of this offence in this case is the seriousness of the offence, with the maximum penalty being 10,000 penalty units or imprisonment for five years or both. Though a regulatory offence, by virtue of section 2 of the Penal Code Cap 26, the maximum prescribed term of imprisonment being more than three years means by classification this offence is a felony.

35. Ms Olutimayin cited the case of *Millberry v R* where it was stated:

*"...the defendant's good character, although it should not be ignored, does not justify a substantial reduction of what would otherwise be the appropriate sentence."*²⁶

36. Ms Olutimayin submits that the following sentencing principles should be considered by the court in this case:

- i) The need for general and specific deterrence
- ii) The need for appropriate retribution to punish the offender; and
- iii) The need to consider prospects of rehabilitation

37. Ms Olutimayin correctly points out that there are no precedents or cases that have come before the Courts to act as guidelines in sentencing for this type of offending. Ms Olutimayin however submits that, it is in the court's hands to consider the appropriate sentence after considering the circumstances of this case.

38. Ms Olutimayin submits that any penalty imposed must consider both specific and general deterrence. This submission is based on the fact that the Orders made by the Prime Minister were done in light of the Covid-19 pandemic which shook the world and the threat it poses to Solomon Islands as a Nation. Any sentence imposed by the Court must send a clear message to the people in this Country that actions taken which shows no regard for the law and pose a threat to the wellbeing of the People in Solomon Islands must not be taken lightly by the Courts in this jurisdiction.

²⁶ [2002]EWCA Crim 2891(09 December 2020) at paragraph 29

Specific deterrence

39. I do not believe specific deterrence plays any role in sentencing the defendant in this case now before this court. The defendant is a first offender. The antecedent of the defendant and the explanations given by the defendant, through his statement given to the court, which the prosecution took no issue with, as, is set out in this judgment on sentence, I am satisfied that the defendant will not re-offend.

Rehabilitation

40. The court having rejected the submission by Ms Olutimayin calling for the imposition of a sentence to reflect specific deterrence, must in my view, also reject the submission by the crown calling for the imposition of a sentence to reflect the prospect of any rehabilitation must also fail. If as the court finds, that, it is satisfied the defendant will not re-offend, then there is nothing to rehabilitate the defendant from.

The need for appropriate retribution to punish the offender.

41. Ms Olutimayin submitted that those who commit a crime must be punished. Ms Olutimayin submitted that Aviation regularly pass information to airmen so that they know what happens. The Court should therefore impose a sentence to reflect the principle that those who commit a crime must be punished. From paragraph 10 to 21 in this judgment, I had set out in detail the chronology of events that led, step by step, to the commission of the offence by the defendant. Take away the explanations given by the defendant as set out in paragraph 10 to 21, of this sentence, then, Ms Olutimayin's submission for the imposition of a sentence to reflect the principle of retribution would be supported. However, viewed in the context of the explanations given,

there being clear information given to the authorities both in Vanuatu and Solomon Islands about the flight plan of the defendant, and the fact that he was cleared by Immigration Officials to enter the Country; whilst he must be punished, in the same breath, the court in my considered view, cannot close its eyes from all the other steps taken by the defendant to ensure he complied with all the other laws of Vanuatu prior to departing Vanuatu and Solomon Islands prior to entering Solomon Islands.

General deterrence

42. Ms Olutimayin submitted that, the Orders made by the Prime Minister were done in light of the Covid-19 pandemic which shook the world and the threat it poses to Solomon Islands as a Nation. Any sentence imposed by the Court must send a clear message to the people in this Country that actions taken which shows no regard for the law and pose a threat to the wellbeing of the People in Solomon Islands must not be taken lightly by the Courts in this jurisdiction.

43. Mr Radclyffe on the other hand submits that the court dismiss absolutely the charge against the defendant under section 35 of the Penal Code Cap 26.

44. Section 35 of the Penal Code Cap 26 reads:

"Where, in any trial, the court thinks that the charge against the accused person is proved but is of opinion that having regard to the character, antecedents, age, health or mental condition of the accused, or to the trivial nature of the offence or to the extenuating circumstances in which the offence was committed, it is not expedient to inflict any punishment, the court may, without proceeding to conviction, make an

order dismissing the charge absolutely or conditionally."²⁷

45. Justice Bird in *R v Tapoika*²⁸ observed that:

"Instead of proceeding to convict the appellant, the learned Magistrate opted to discharge him under section 35 of the Penal Code. It is my view that when a court of first instance uses this section, they are opting not to punish the offender"²⁹

46. The effect of the submission by Mr Radclyffe that the court takes the sentencing approach in section 35 of the Penal Code Cap. 26, is to dismiss the charge against the defendant and impose no punishment on him because of the peculiar and unique circumstances that exist in the circumstances of this case.

47. The New Zealand Court of Appeal's judgment quoted with approval in Australia and it illustrates the principle of "general deterrence" in sentencing;

"We should say at once that this last argument omits one of the main purposes of punishment, which is to protect the public from the commission of such crimes by making it clear to the offender and to other persons with similar impulses that, if they yield to them, they will meet with severe punishment. In all civilized countries, in all ages, that has been the main purpose of punishment, and it still continues so. The fact that punishment does not entirely prevent all similar crimes should not obscure the cogent fact that the fear of severe punishment does, and will, prevent the commission of many that would have been committed if it was thought

²⁷ Section 35 of the Penal Code Cap 26

²⁸ [2020]SBHC 11,HCSI-CRCAC 693 of 2019.(10th February 2020) at paragraph 18

²⁹ [2020]SBHC 11,HCSI-CRCAC 693 of 2019.(10th February 2020) at paragraph 18 at page 4

that the offender could escape without punishment, or with only a light punishment. If a Court is weakly merciful, and does not impose a sentence commensurate with the seriousness of the crime, it fails in its duty to see that the sentences are such as to operate as a powerful factor to prevent the commission of such offences".³⁰

48. The country is currently under a State of Public Emergency because of Covid-19. The Solomon Islands is still very fortunate to be Covid-19 free as a Nation. The Court equally has a duty to protect the Nation by coming to aid of the front-liners to enforce the laws through the sentences it imposes. The breach of any law made pursuant to the State of Emergency Act, the Regulations and Orders, to ensure that the Nation remains Covid-19 free and that the Country is protected, must not be taken lightly. Rather, it must in my view be enforced effectively and decisively, bearing in mind the need to be balanced, firm, fair and square when the meting out the sentence.

49. Taking into account all the mitigating factors and aggravating factors present in this case, whilst, I accept that very powerful and exceptional mitigating factors exist in favour of the defendant, the need to deter other would be similar offenders, the need for general deterrence, given the circumstances of the country at this time, doing all it could to keep the Covid-19 virus out of the country, I find that, I am unable to agree with Mr Radclyffe, that an appropriate order would be the dismissal the charge no punishment imposed on the defendant. If I were to accept the submissions by learned counsel Mr Radclyffe on this point, I would be undermining the whole purpose of the declaration of the State of Emergency and the Regulations and Orders creating offences to deal

³⁰ R v Radich (1954)NZLR 86, at 87 cited in R v Madoe [2005]SBHC 43;HCSI-CRC 492 of 2004 (8th March 2005) at page 5

with the threat of Covid-19 as a pandemic, by rendering these ineffective through the imposition of inadequate and ineffective sentences.

50. Having made the observations in paragraph 49 of this judgment, I also hold the view that the appropriate sentence given the antecedent of the defendant, circumstances surrounding the offending, and the powerful mitigating factors present in favour of the defendant, is a fine. I enter a conviction against the defendant. I impose a fine of \$5000.00. Fine to be paid before 4pm 30th June 2020. In default 6 month's imprisonment.

Dated the 25th day of June 2020



Emma Garo
Chief Magistrate

