



**IN THE CENTRAL MAGISTRATES' COURT)
OF SOLOMON ISLANDS AT HONIARA)
(Criminal Jurisdiction)**

Criminal Case No. 667 of 2021

REGINA

-v-

GM

Date of plea: September 24, 2021
Date of hearing: September 24, 2021
Date of sentence: September 27, 2021

*Hellen Naqu for the Crown
Emy Rusi for the Defendant*

SENTENCE

Introduction

1. A name suppression order is invoked to suppress the defendant's name, being a juvenile at the time of offence. Consequently, he shall be referred to as "G M" for the purposes of this sentence.
2. The defendant, Mr. G M is charged with an offence of *Restriction of Movement of Persons in Honiara* contrary to Clause 4(1) and (2) and (b) of the Emergency Powers (COVID-19) (Honiara Emergency Zone) (Restriction of Movement) Order 2021 and Regulation 15 (1) (a) (2) and (4) of the Emergency Powers (COVID-19 (No.2) Regulation 2021.
3. The defendant appeared on September 24, 2021 and pleaded guilty to the offence as charged. Consequently, a criminal conviction was thereby registered. He appears today from bail to receive his sentence, I shall now do so.

Charge

4. The charge was brought and filed in Court on September 1, 2021. its statement of offence and particulars of offence are as quoted below:

Statement of offence

Restriction of Movement of Persons in Honiara contrary to Clause 4(1) and (2) and (b) of the Emergency Powers (COVID-19) (Honiara Emergency Zone) (Restriction of Movement) Order 2021 and Regulation 15 (1) (a) (2) and (4) of the Emergency Powers (COVID-19 (No.2) Regulation 2021.

Particulars of offence

That Mr. Gino Mae on the 30th day of August 2021 at Vara Creek, Central Honiara, Guadalcanal Province, at about 1:45pm, without lawful excuse was not at his place of residence namely, Vara Creek, but was seen along Vara Creek main road, an area designated as an Emergency Zone during the Restriction Period by the Prime Minister of the Solomon Islands.

Facts

5. The facts were agreed and signed by both counsels. It reveals that on August 30, 2021, the defendant was seen along Vara Creek main road, Central Honiara, at about 1:45pm. At that time of offending, there was an active order for Restriction of Movement of persons in the designated Emergency Zone, from 6:00pm on August 29, 2021 until 6:00am on Tuesday August 31, 2021.
6. The defendant did not have any lawful excuse to be walking along the Vara Creek main road and he was not at his place of residence.
7. The defendant forgot that the lockdown continued and was intending to return to his house when he was found at Vara Creek main road, Central Honiara. Police operational officers patrolling along Vara Creek Road arrested the defendant and brought him to Central Watch house at Central Police Station.

Maximum Sentence

8. The maximum penalty for an offence under Regulation 15 (1) (a) (2) and (4) of the Emergency Powers (COVID-19 (No.2) Regulation 2021 is 15,000 penalty units or imprisonment for 5 years, or both. The maximum penalty reflects the seriousness of the offence, and how our legislature is concerned and serious about the risks and dangers of the Novel Corona Virus (COVID-19), and our country's preparation to tackle it, in the event it enters our nation. However, cases are judged on their own set of facts and circumstances, and the maximum is reserved for the extreme form of this offence.

Aggravating and mitigating features

9. Apart from the defendant's ignorance to the law and unexcused mistaken belief that the lockdown had ended on Monday, there is simply no aggravating factor in this case. The crown counsel's submission that the seriousness of the offence is an aggravating factor is, in my view, misconceived. A seriousness of offence does not make it an aggravating factor, rather, it demonstrates the Parliament's attitude towards such an offence. But, courts have always been carefully guided with the facts to invoke it.
10. An aggravating factor must not form part of the elements of offence, nor from its maximum penalty, instead, from the defendant's actions that infuriates the situation,

which a trier of fact would consider it serious, as oppose to a mere breach or contravention to the law.

Sentencing Range or Sentencing Tariff

11. I am grateful for counsel for the Crown to provide the court with previous case authorities, which will greatly assist the court in establishing the tariff, and fixing the starting point. Counsel has referred the court to cases¹ from the 2020 lockdown orders of which the court had imposed fine penalties ranging from \$500 to \$1,000. She submitted that given the circumstance of the offending, a \$700 fine penalty is appropriate.
12. In the recent case of *R v Auga*² ("*Auga*"), the court had imposed a fine of \$300 on the defendant after a guilty plea. The facts were that, the defendant had went looking for cigarettes at Savo heights, and was not at his residence at Namoruka area, although he knew full well that it was during a lockdown period, and the area of which he went was part of the Emergency Zone. He was a young person in his early 20's, and was working as a casual worker for Red Devil Company.
13. In *R v Tela & Others* ("*Tela*"), the facts were that, the defendants had thought the area located at the far eastern end of the Henderson airport was beyond or outside of the Emergency Zone. They had pleaded guilty to a count of Restriction of Movement of Persons in Honiara. The court imposed a good behavior bond for a year in the sum of \$500.
14. Having outlined the above case authorities, it is plain to state that the tariff is between for offences of mock lockdown exercises, ranges from good behavior bond to \$1,000 fine, depending on its unique circumstances and factors.

Discussion

15. As explained in *Tela*, the circumstance of this case is one of an 'exercise' or 'mock' lockdown, as oppose to curbing the spread of an actual corona virus outbreak. It is accepted that it was made in sharpening the nation's preparedness towards possible outbreak and future lockdowns. And, it must be stated that there is no 'real risk' at the moment, or that there is no current positive case recorded in the nation. Hence, the zero to no real risk of community transmission, as far as the lockdown is concerned.
16. The significance of a lockdown is similar, if not, the same as 'stay at home order' by which citizens are ordered to remain at home or place of residence, to curb and minimize the spread of covid-19, which spreads through social interactions and other gatherings. In our context, there is no covid-19 to avoid, rather, a mock to test how citizens would endure such extensive period at home, without work and other pertinent duties and obligations. It was also made to sharpen our frontliners to better identify the areas of which they need to improve on.

¹ SBMC Criminal Case 534 of 2020 *Regina v Elliot*, SBMC Criminal Case 529 of 2020 *Regina v Foufaka*, and SBMC Criminal Case 525 of 2020 *Regina v Alke & Others*

² SBMC Criminal Case 666 of 2021

17. Solomon Islands in simple explanation, 'cannot' stand an outbreak of covid-19, hence, the Government's attitude to prepare ourselves ahead of what we may face in the foreseeable future. The exercise was only for 36 hours, however, if covid-19 knocks Solomon Islands, it could increase beyond that; that is why our Government is serious with such exercise. The least our country can do is to set drills and exercise to build our readiness. If we cannot stand the exercise, then we are simply preparing ourselves for a huge disaster.
18. The need for preparedness cannot be overemphasized. The corona virus or covid-19 spreads like wild fire, and well developed nations such as United States of America with highly sophisticated health facilities could not stand its outbreak. They had death tolls the size of Solomon Islands' population. How much more if this virus enters Solomon Islands, it would be unfathomable.
19. The defendant forgot when the lockdown was to end, thus, decided to return to his home, from his uncle's house. He went there the day before lockdown, and because it was late, he had to wait until the lockdown ends. He could have checked with his relatives, or friends, or merely looking around the streets would answer his query. The streets, suburban areas and settlements were all at peace without any unnecessary movements. This would have explained that the lockdown was still on. The time of offence explains that he could have known that the lock down was still on, given that it was a Monday. I cannot accept his words and explanation. I accept that he deliberately return home from his uncle's house that afternoon, knowing full well that the lockdown was still on. How could he not know that the streets were empty that whole morning. His explanation is tenuous. This is a flagrant breach to the lockdown orders.

Sentencing principle

20. The defendant in this case is a 17 year old youth, and is categorized as a juvenile, which also explains his behaviour on the date of offence. I acknowledge that as a juvenile, he is learning and developing from experiences. He has a lot to explore in his life, and this encounter with the law, including the several hours spent under police detention would serve him a sufficient lesson.
21. Upon considering the defendant's juvenile status, no aggravating factor, and where he was arrested, being close to his home at Vara Creek, and noting the lack of information as to where (address) he came from, plus the detention at police custody for several hours; I am convinced that a good behavior bond would be proper. A good behaviour bond sentence would offer rehabilitation for him, including a strong lesson for him and a message to the public to acknowledge the rule of law, and to submit to regulations made by our Government during this period.
22. For today, I am persuaded to invoke s.16 (k) of the *Juvenile Offenders Act, b)* by ordering the defendant to enter in a good behavior bond for 1 year in the sum of \$500. Although, it was a mock lockdown, it was made in preparing the citizens of this nation, and the

defendant's attitude is a risk to the rapid spread of community transmission, if covid-19 enters our Island nation.

Sentence orders

1. I hereby sentenced the defendant, GM to **a good behaviour bond for 1 year in the sum of \$500. The defendant must keep the peace and be of good behaviour for this said period.**
2. Conviction is entered.
3. 14 days right of appeal is applied.
4. Order accordingly.

THE COURT



MR. LEONARD B. CHITE
Principal Magistrate
Central Magistrates' Court

