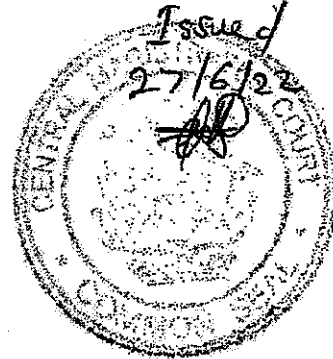


IN THE CENTRAL MAGISTRATE COURT)
OF SOLOMON ISLANDS AT HONIARA)
(Criminal Jurisdiction)

Criminal Case No: 133 of 2022.

REGINA
-v-
CARLOS GAO



Prosecution: Ms. Francisca A. Luza
Defence: Self-represented
Plea Date: June 4, 2022
Sentencing Submissions: June 16, 2022.
Sentence: June 27, 2022

SENTENCE

A. BACKGROUND

1. This is a case in which I will sentence the defendant, Carlos Gao, who was convicted on his own guilty plea to two charges of simple larceny contrary to section 261 (1) of the Penal Code [Cap26]. The offences were committed on two separate occasions and against different complainants. All occurred at Kukum shopping area in East Honiara.
2. On 4th June 2022, he was arrested by police and brought to court for a remand application. During the hearing of the remand application, the court enquired with him whether he preferred to have the charges read over to him. He agreed and was arraigned, and pleaded guilty to the charges. The matter then listed to 16th June 2022 for sentencing submissions and *allocutus*. The prosecution and defendant made verbal submissions to assist and guide the court in determining an appropriate sentence for this case. This is the court's verdict on sentence.

B. THE CHARGE

3. Section 261 (1) of the Penal Code which the defendant flouted states:

was about to close the shop. He put his Black Redmi 115 lite mobile phone valued about \$4,300 (SBD) on the counter and was looking for his keys in the interior of the shop. It was when he was busy looking for the keys that the defendant entered the shop, grabbed the phone and escaped.

10. The complainant reported the matter to police and upon police investigations, the phone was recovered and returned to the complainant few weeks after the incident.

D. THE AGGRAVATING AND MITIGATING FACTORS

11. I considered the following as aggravating factors to the offences. First, the *modus operandi* or how the offences were executed by the defendant involves an element of planning and a deliberate desire to steal. The defendant had to watch to make sure the opportunities to steal were unfolded before him and then he deliberately moved himself to the complainants' private spaces where the basket and the mobile phone were placed and whisked them like a professional thief. The defendant's theft herein cannot be said to have occurred by mistake, but one that he had think it through and successfully achieved. Second, \$18,800 SBD cash and an expensive mobile valued \$4,300 were stolen. The cumulative nature of this theft is serious in that it involves a large sum of money and an expensive mobile phone. Third, of the \$18,800 money stolen, \$17,000 was not recovered and permanently gone by the selfish and inconsiderate conduct of the defendant. This is obviously a large amount of the complainant's hard earned money that was stolen by this defendant. Fourth, the defendant committed another theft while he was charged by the police with the same offence and while under the police bail. He knew very well that he has flouted the law and will be prosecuted in court. Hence, he should behave himself whilst on bail. In my view, he reoffend whilst he knew very well he was on police bail. This is a clear manifestation of his wanton disregard to the law of this country which is unfortunately, contemptuous. That is a no care attitude that must be condemned to its fullest. Finally, the theft of the mobile phone was committed at night at around 9:00pm and when the shop was no longer opened to the public. He had trespassed into this closure and carried out the theft. He used the insecurity brought upon by the night to advance his theft. This is an aggravated factor.
12. In terms of his matters of mitigation, I took into account his earliest guilty plea to the charges. By that I mean, he admitted the charges at his first appearance in the court. I

him got out of vehicle and quickly followed him and yelled out for him to stop. The defendant did not stop but kept walking away from the complainant. The money was retrieved from the defendant. He was arrested and later brought to court. He pleaded guilty and was sentenced to 9 months imprisonment backdated to time spent in custody. Since he had already spent more than 1 month in custody, the court ordered that the balance of the term be fully suspended for 2 years on the condition that he will not commit any offence during the suspension term.

17. Another example of the sentence passed by the Court for this offence can be seen in *R v Pandavisu* [1990] SBHC 86 where the learned sentencing Magistrate sentenced the defendant to 9 months imprisonment on a charge of simple larceny. Ward CJ (as he was then) while reviewing that case altered other sentences imposed on the accused, but confirmed the sentence of 9 months of the charge of simple larceny.
18. Also, in another case of *Eapa v Reginam* [2001] SBHC 77, the appellant pleaded guilty to simple larceny. In that case he stole a CD player from his friend's house. He was sentenced to 9 months imprisonment by the trial Magistrate. On appeal Kabui J (as he then) upheld the sentence of 9 months but suspended it for 2 years because the CD was recovered after the incident. In his remarks, he stated that simple larceny is a fairly serious offence.
19. In *Regina v Pilly* [2001] SBHC 64, the defendant was charged for store breaking and stealing contrary to section 300 (a) of the Penal Code. The defendant stole \$1,700 from a shop and the money was never recovered. He pleaded guilty to the charge and was sentenced to 10 months imprisonment at the Magistrates Court. On review, Kabui J (as he then), set aside the conviction and the sentence for store breaking and instead convicted the defendant of simple larceny contrary to section 261 (1) of the Penal Code.

F. THE SENTENCE

20. The range of sentence imposed by the courts in those few cited cases showed that the sentence of not more than 2 years was imposed for a guilty plea matter involving theft of money or property(s) valued less than \$10,000SBD. I am sure some of the cases in this jurisdiction that I didn't refer to have echoed the similar range as well. Hence, it is implicit from that trend of jurisprudence that theft of money in excess of \$10,000SBD or

"But if sticking to the traditional sentencing considerations are having no impact in the modern society then we need to change, for it is said that doing the same thing again and again and expecting results is stupidity."

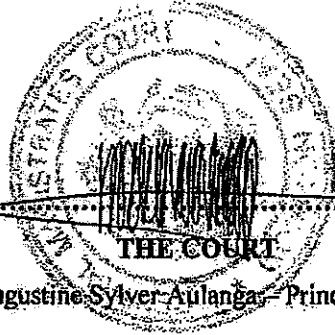
24. In *R v Soni* HCSI-CRC No. 128 of 2011, at paragraph 19, then judge Pallaras also echoed the need for the court not to turn a blind eye to this pathetic reality of crime but to be sensitive to its prevalence in the country:

"We must not allow ourselves to be de-sensitized to the criminality of the offence just because it is so prevalent in our midst."

25. I think the time has come that enough is enough. The court must send a strong message that carries a tangible result of objectively discouraging and decreasing stealing and its related offences in Honiara and in the country. That is, if you steal large amount of money or valuable properties of others, you will go to jail for a long term, nothing more nothing less.
26. The defendant herein had caused unhappiness and anger to the person who had lost his \$17,000 SBD money and the owner of the mobile phone. He is a thief and a bad citizen. He had no respect to other people's money and property. He should be ashamed of himself. Through his own criminality, he just recorded his name in the criminal records of the Royal Solomon Islands Police which could impede or jeopardize his prospects of employment in the light of the ongoing overseas employment opportunities such as the Labour Mobility or Seasonal Work scheme.
27. The defendant is a 20-year-old person. He is already a grown up person and should behave like other good and well behaved young persons. He said in court that his father, Harvey Gao, is a pastor of the Seventh Day Adventist (SDA) church and his mother is a leader of the Dorcas Women Ministry of the SDA church as well. If that so, then in fact, he was brought up from a Christian family and should know better that stealing is a bad thing and a crime. His public conduct did not reflect the good and Christian status of his family. He appeared to be a notorious thief and I am at loss to understand why his parents, who are well respected senior church leaders of the SDA church, have failed to perform their parental roles, supervision and discipline over this defendant.

ORDERS OF THE COURT

- [1]. For both offences, I imposed a total sentence of 41 months imprisonment or 3 years and 5 months imprisonment.
- [2]. Presentence period in custody is to be deducted from this term in Order 1 above.
- [3]. 14 days right of appeal applies.



Augustine Sylvester Aulanga - Principal Magistrate