

**IN THE CENTRAL MAGISTRATES COURT OF SOLOMON ISLANDS  
AT HONIARA**

(Criminal Jurisdiction)

**Criminal Case No: 913 of 2021**

**REGINA**

-V-

**CHARLES SUIGA**

**CORAM: HOLLISON F (PRINCIPAL MAGISTRATE)**

**Appearances:**

Mr Lindsay Temaika, Senior Legal Officer, Office of the Director of Public Prosecutions, for the Crown in cc No. 903 of 2021

Ms Emy Rusi, Senior Legal Officer, Public Solicitors Office, for the defendant

***Date of Sentence: 13 January 2022***

**Notice: This copy of the Court's Reasons for Judgment/Sentence is subject to formal revision prior to publication.**

**SENTENCE**

**INTRODUCTION**

1. The defendant Mr Charles Suiga pleaded guilty to one count of *Restriction of Movement of Persons in Honiara: contrary to Regulation 5(1), (2) (a) and (b); and 9(1) of the Preservation of Public Security Regulations 2021 (No. 2) and section 3 of the Preservation of Public Security Act [Cap 27] and one count of Simple Larceny contrary to section 261(1) of the Penal Code [Cap 26].*
2. I now convict him based on the plea entered.

**FACTS**

3. The facts can be summarized as follows.



4. The defendant's name is provided above and he is 30 years old. He is a native of Arao village, Baelelea, Malaita Province. He is a resident of Henderson town in Central Guadalcanal on Guadalcanal.
5. On the 26<sup>th</sup> November 2021, His Excellency, Sir David Vunagi, the Governor General of Solomon Islands declared a curfew on the basis that it was necessary for the preservation of public security to do so under section 3 of the *Preservation of Public Security Act* [Cap 27].
6. The curfew ran from 7:00pm to 6am daily commencing on the 26<sup>th</sup> November 2021 until its revocation on the 10<sup>th</sup> December 2021.
7. On the 26<sup>th</sup> November 2021 at about 7:30pm, the defendant was not at his place of residence at Samlinsan area in Henderson but was seen by Police Officers who were manning the Prime Minister's Residence at Lunga area walking along the Lunga main road, which is an area within the Emergency Zone without any lawful excuse.
8. He was halted for breaching the curfew by the Police officers and he was found with few items such as speaker, a packet of cigarette and a lighter that he looted from Uncle Alick shop opposite King George VI School at Ranadi Industrial area. The items were recovered from him.
9. The defendant was escorted to the Henderson Police Station where he was dealt with.
10. On Monday the 29<sup>th</sup> of November 2021, the defendant participated in an interview with the police. He said that he knew that there was a curfew on that day. He admitted to have committed theft at Uncle Alick Shop in which he stole a speaker, a torch and a lighter.
11. After that, he walked in an easterly direction heading to his place of work where he worked as a part-time security guard at a shop called Island Market in Henderson when he was arrested.
12. He was since remanded in custody until now.

### DISCUSSION AND ANALYSIS

13. In *Tii v Regina* [2017] SBCA 6; SICOA-CRAC 14 of 2016 (5 May 2017),<sup>1</sup> the Court of Appeal stated as follows:

21. *A sentence should be crafted to attain the goals of punishment, deterrence and rehabilitation.*

<sup>1</sup> *Tii v Regina* [2017] SBCA 6; SICOA-CRAC 14 of 2016 (5 May 2017),

22. The starting point should be consideration of the facts of the offence and of the appropriate range of penalty for the offence constituted by those facts. Then any aggravating circumstances should be identified.

23. The sentencing judge's attention should then turn to facts relating to the offender – his antecedents (including personal circumstances and criminal history, if any) and mitigating factors such as youth, remorse, or plea of guilty (including the circumstances in which the plea was entered).

14. Section 3 of the *Preservation of Public Security Act* [Cap 27]<sup>2</sup> provides as follows:

3.—(1) If at any time the Governor-General is satisfied that it is necessary for the preservation of public security so to do, he may by notice declare that the provisions of subsections (3) and (4) shall come into operation and thereupon those provisions shall come into operation accordingly; and they shall continue in operation until the Governor-General by further notice directs that they shall cease to have effect, whereupon they shall cease to have effect except as respects things previously done or omitted to be done.

15. Section 5 of the *Preservation of Public Security Regulations (No. 2) 2021* states as follows:<sup>3</sup>

**Restriction of movement of persons**

(1) A person must not enter or leave the emergency zone between the hours of 7.00 pm and 6.00 am.

(2) A person in the emergency zone must:

(a) be at the person's place of residence, and remain there, between the hours of 7.00 pm and 6.00 am; and

(b) not leave or be away from the person's place of residence, between the hours of 7.00 pm and 6.00 am.

(3) Subregulation (1) or (2) does not apply if a person:

(a) enters or leaves the emergency zone, or leaves his or her place of residence,

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because of a matter of urgency; or

(b) is exempted from complying with this Order under regulation 6; or

(c) is exempted in writing from complying with this Order by the Commissioner of Police.

16. Regulation 9 of the *Preservation of Public Security Regulations (No. 2) 2021* states as follows:

(1) A person who contravenes regulation 5 commits an offence.

Maximum penalty: 10,000 penalty units or 5 years' imprisonment, or both.

<sup>2</sup> *Public Security Act* [Cap 27], s 3

<sup>3</sup> *Preservation of Public Security Regulations (No. 2) 2021* (Legal Notice No. 334) dated Friday 26<sup>th</sup> November 2021

### Aggravating Factors

17. **Maximum Sentences.** The maximum sentence of 5 years or 10, 000 penalty units or both with respect to the *Restriction of Movement of Persons in Honiara; contrary to Regulation 5(1), (2) (a) and (b); and 9(1) of the Preservation of Public Security Regulations 2021* shows that this is quite a serious offence.<sup>4</sup> In terms of the offence of simple larceny, the maximum sentence is 5 years imprisonment which is also a felony.<sup>5</sup>
18. **Circumstances of the offending.** The regulations were promulgated or made for the preservation of public safety in Honiara because of the looting and burning of shops from the 24 to 26 November 2021. The total monetary losses incurred because of the unlawful events is now valued in millions of dollars. The defendant committed theft at Uncle Alick Shop and whilst on his way home, he breached the curfew regulations. The fact that he stole the items from the shop during the height of the riots aggravated the offending. As a part-time security officer at another shop, he ought to have known that stealing is not only morally wrong and an affront to the growth of any business but also it is against the laws of this country which deprived the rights of the owners of the properties.
19. Although there is no evidence that he participated in destroying the said building, the fact that he stole from the shop contributed to the economic loss that the shop owner suffered which was worsened by its eventual burning. In *Igi v Regina* [1997] SBHC 39; HC-CRAC 047 of 1996 (23 July 1997)<sup>6</sup>, his Lordship Justice Palmer, as he then was, stated as follows when sentencing several defendants for taking part in a riot which I think the sentiments are relevant for looters and I quote:

*... In the view of this Court, it is a wholly wrong approach to take the acts of any individual participator in isolation. They were not committed in isolation and, as already indicated, it is that very fact that constitutes the gravity of the offence.*

### Mitigating factors.

20. The mitigating factors include early plea and remorse, first offender/no previous, cooperation with the Police and his personal circumstances.

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<sup>4</sup> *Preservation of Public Security Regulations (No. 2) 2021 (Legal Notice No. 334) dated Friday 26<sup>th</sup> November 2021*

<sup>5</sup> *Penal Code [Cap 26], s 261 states: 261-(1) Stealing for which no special punishment is provided under this Code or any other Act for the time being in force is simple larceny and a felony punishable with imprisonment for five years.*

<sup>6</sup> *Igi v Regina* [1997] SBHC 39; HC-CRAC 047 of 1996 (23 July 1997)

### Comparative sentences:

#### Restriction of movement

21. In terms of the offence of restriction of movement, I note that the sentences that have been delivered by this court so far include mostly custodial sentences, penalty fines, suspended sentences and good behavior bond.<sup>7</sup>

#### Simple Larceny

22. In *Eapa-v-Reginam* [2001] CC No. 248 of 2001<sup>8</sup>, the offender was sentenced to a term of 9 months imprisonment in the Magistrates Court for one count of simple larceny. The matter was then appealed to the High Court, and the learned High Court Judge ordered that the sentence be suspended for two years on the basis that the property stolen was recovered and given back to the owner.
23. In *Regina v Luimalefo* [2017] SBMC 46; Criminal Case 958 of 2017 (26 September 2017)<sup>9</sup>, the defendants pleaded guilty to one count of Simple Larceny contrary to section 261(1) of the *Penal Code* [Cap 26]. Mr David Junior Malefo was sentenced to an imprisonment term of 1 ½ years' imprisonment whilst Mr Tome Gagame Junior was sentenced to an imprisonment term of 2 years. The basic facts of that case were that on the 11<sup>th</sup> of September 2017, the defendants stole the following items which were owned by an expatriate business man Mr Jonathan Pestana: SBD10, 000 and USD 5,000 that the victim left in his car parked behind his shop at the Kukum Highway in Honiara.
24. In *Regina v Ilala* [2017] SBMC 18; CMC-CRC 325 of 2015 (14 June 2017)<sup>10</sup>; the defendant was sentenced to 12 months of imprisonment for one count of Simple Larceny contrary to section 261(1) of the *Penal Code* [Cap 26]. The defendant was also sentenced for other offences.

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<sup>7</sup> Criminal Case No. 903 of 2021 (Magistrates Court)-Kwaimani and others (20<sup>th</sup> December 2021). The adult defendants were sentenced to an imprisonment of 12 months, a 19-year-old was sentenced to 8 months' imprisonment, and three juvenile offenders were sentenced to a fine of SBD 500 with a good behavior bond.

<sup>8</sup> *Eapa v Reginam* [2001] SBHC 77; HC-CRC 248 of 2001 (2 November 2001)

<sup>9</sup> *Regina v Luimalefo* [2017] SBMC 46; Criminal Case 958 of 2017 (26 September 2017)

<sup>10</sup> *Regina v Ilala* [2017] SBMC 18; CMC-CRC 325 of 2015 (14 June 2017);

25. In *Regina v Kemakeza* [2008] SBHC 41; HCSI-CRC 467 of 2007 (3 September 2008)<sup>11</sup>, the defendant was sentenced to 18 months imprisonment term for one count of Simple Larceny contrary to section 261(1) of the *Penal Code* [Cap 26]. Mr Kemakeza was also sentenced for other offences which were ordered to be served concurrently with the simple larceny charge.
26. The sentencing options for simple larceny in this jurisdiction include the following: a good behavior bond, penalty fine, suspended and custodial sentences. In this present case, the defendant stole the items during the height of the riots on the 26<sup>th</sup> of November 2021 which of course aggravated this offending.<sup>12</sup> This must be differentiated with the case of *Eapa v Regina*<sup>13</sup> in which the defendant voluntarily returned the property as opposed to this present case where the properties were recovered by the Police.

#### Starting Point

27. After having considered all the factors, I am of the view that this case should be considered as quite serious as it was aggravated by the theft committed during a time of lawlessness in Honiara, therefore the most appropriate sentence is an immediate custodial sentence. Because of the theft, this case should also logically receive a harsher sentence than the Criminal Case No. 903 of 2021 (Magistrates Court)-*Kwaimani and others* (20<sup>th</sup> December 2021).<sup>14</sup> Therefore, I am of the view that a starting point of 32 months' imprisonment is appropriate for both offences.
28. **Early guilty plea.** The defendant entered an early guilty. This is also a sign of remorse and it saves the courts time and resources of having to resolve the matter by way of a trial. I deduct 10 months for both offences.
29. **First offender.** The defendant is a first time offender which means he was a law abiding citizen for the past 30 years of his life. He must be given credit for this and I deduct 4 months for both offences.
30. **Cooperation with the Police.** The defendant cooperated well with the Police. I deduct 2 months for both offences.
31. **Personal Circumstances and other factors.** The defendant is 30 years of age and worked as part-time security officer in one of the shops at Henderson in Central Guadalcanal. He reached form 3 level of education at Siota Secondary School. He is a divorcee and a father of two

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<sup>11</sup> *Regina v Kemakeza* [2008] SBHC 41; HCSI-CRC 467 of 2007 (3 September 2008)

<sup>12</sup> *Regina v Kemakeza* [2008] SBHC 41; HCSI-CRC 467 of 2007 (3 September 2008); *Eapa v Reginald* [2001] SBHC 77; HC-CRC 248 of 2001 (2 November 2001)

<sup>13</sup> *Eapa v Reginald* [2001] SBHC 77; HC-CRC 248 of 2001 (2 November 2001)

<sup>14</sup> Criminal Case No. 903 of 2021 (Magistrates Court)-*Kwaimani and others* (20<sup>th</sup> December 2021). The adult defendants were sentenced to an imprisonment of 12 months, a 19-year-old was sentenced to 8 months' imprisonment, and three juvenile offenders were sentenced to a fine of SBD 500 with a good behavior bond.

children who are currently living with their grandmother in their home village. He often sends money to assist his children whenever he got paid for any casual work that he engaged in. He is also self-employed. I take into account his personal circumstances and I deduct 2 months for each of the offences.

32. Hence, I am satisfied that 14 months' imprisonment is appropriate for the offence of restriction of movement and the offence of simple larceny respectively.

33. I have considered whether or not for the two offences to be served concurrently or consecutively, and in which the totality principle must always be considered. In *Angitalo v Regina* [2005] SBCA 5; CA-CRAC 024 of 2004 (4 August 2005)<sup>15</sup>, the Court of Appeal of stated that:

*The fundamental underlying principle is that a sentence should reflect the true criminality involved in the offences, without on the one hand punishing the offender more than once for the same or essentially the same criminal conduct or, on the other hand, failing to punish the offender for committing a crime. This will almost always be a matter of fact and degree, requiring the exercise of judicial discretion.*

34. In such circumstances, I am guided by the principle in *Angitalo* which requires me to exercise my judicial discretion.<sup>16</sup> These are two different offences but they are closely connected in terms of proximity and occurred on the same day, and I am satisfied that the sentences for both offences should be served concurrently in which I opine that the total sentence still reflects the true criminality of the offences involved.

### CONCLUSION

35. To commit theft and other offences under the guise of political expression cannot be accepted under any circumstances which only makes our country poorer. In addition to that, we should bear in mind our civic duties as responsible and law abiding citizens, and I wish to conclude with these famous words echoed by a renowned global leader in 1961 in which I quote:

*"ask not what your country can do for you – ask what you can do for your country."*<sup>17</sup>

36. In view of the above, and after having balanced the relevant sentencing principles such as punishment, deterrence and rehabilitation, I hereby sentence Mr Suiga to 14 months' imprisonment for one count of *Restriction of Movement of Persons in Honiara: contrary to Regulation 5(1), (2) (a) and (b); and 9(1) of the Preservation of Public Security Regulations*

<sup>15</sup> *Angitalo v Regina* [2005] SBCA 5; CA-CRAC 024 of 2004 (4 August 2005)

<sup>16</sup> *Angitalo v Regina* [2005] SBCA 5; CA-CRAC 024 of 2004 (4 August 2005)

<sup>17</sup> These words "And so, my fellow Americans: ask not what your country can do for you – ask what you can do for your country" are attributed to US President John F Kennedy during his inaugural speech on January 20 1961. See on John F Kennedy Presidential Library and Museum "Ask not what your country can do for you..." <https://www.jfklibrary.org/learn/education/teachers/curricular-resources/elementary-school-curricular-resources/ask-not-what-your-country-can-do-for-you> (Accessed on 13th January 2022).

2021 and section 3 of the *Preservation of Public Security Act* [Cap 27], and one count of Simple Larceny contrary to section 261 of the *Penal Code* [Cap 26], respectively.

37. Both sentences shall be served concurrently giving a total sentence of 14 months' imprisonment which is also equivalent to 1 year and 2 months' imprisonment.
38. The total sentence shall be backdated to the date of first arrest which was on the 26 of November 2021.
39. I also do not think that suspending the total sentence partially or completely is warranted for in this case because of the severity of the said offences that occurred during the Honiara November 2021 riots.

#### **ORDERS**

40. The orders of the court are as follows:

- [1] The defendant Mr Suiga is sentenced to 14 months' imprisonment for one count of *Restriction of Movement of Persons in Honiara: contrary to Regulation 5(1), (2) (a) and (b); and 9(1) of the Preservation of Public Security Regulations 2021 and section 3 of the Preservation of Public Security Act* [Cap 27] and 14 months' imprisonment for one count of Simple Larceny contrary to section 261 of the *Penal Code* [Cap 26].
- [2] The sentences for both offences shall be served concurrently which gives a final sentence of 14 months or 1 year and 2 months' imprisonment.
- [3] Pre-Sentence-Custody. The sentence must be backdated to the 26 of November 2021, being the date of first arrest.
- [4] The said properties shall be returned to the Solomon Islands Chinese Association (SICA).
- [5] Right of Appeal- within 14 days
- [6] The court so orders.

PRINCIPAL MAGISTRATE FELIX HOLLISON

