



escorted to the Central Police station where you were formally arrested and charged for the offence of Simple Larceny.

7. During the Record of Interview (ROI), you admitted to stealing the speaker and also informed Police of your intention to sell the speaker. When shown the speaker, you identified it as the one you stole.

### Analysis

8. From the brief facts outlined above, I note that the speaker you stole was returned on the spot, and while you did not enrich yourself with the proceeds you could have earned from selling this stolen speaker, I agree with Prosecutions that your actions during the time in question was well planned. Had it not been for the CCTV cameras and had it not been for the Complainant's instincts to go and monitor the movement of customers, you could have gotten away with your actions.
9. I am told that you are a betel-nut seller who still resides with your parents, and I also note that you are a well and fit person, who is capable of engaging in money earning means that are legal in nature.
10. There is no benefit and future in living off money taken from stealing someone else's property. It is now a serious issue within Honiara where people are victimized to the act of stealing. More youths are becoming more involved in this wicked act and are making Honiara unsafe for the general public.
11. At this stage, I wish to highlight the remarks made by Principal Magistrate Augustine Aulanga in the case of *Regina v Luimalefo*, where he states, and I quote:  
*"The offence of stealing is one of the criminal offences that is very much hated in any community/society in Solomon Islands. Those who steal are lazy people and preyed on the efforts and sweats of others to get quick or fast money through illegal ways. It is also a shameful act especially when one used the money to feed himself or his family, knowing very well the money was obtained as a result of stealing. In some instances, this kind of incident may result in retaliatory actions where the consequences maybe severe and unfortunate. Also, in some countries, this is an abhorrent crime where it would attract severe punishment. We are so lucky to live in a country where punishment for this offence is more civilised and less cruel and normally, only imprisonment will follow in serious theft cases. Otherwise, stealing in other countries like in the Muslim world, this offending may result in the cutting/amputation of hands of thieves to avoid repetition of this same offence by the same person once and for all"*.
12. A strong warning needs to be sent out to all likeminded people within our communities as well as those who are constantly standing in front of the shops with the hidden agenda to steal. To condemn such action is not enough, rather it should be a teaching that should be done in all homes, that stealing is not right and one can never find inner peace when he or she make this a habit.
13. The fact that the item stolen was recovered on the spot would definitely have an effect on the final sentence I will impose on you today. I was referred to the case of *Eapa v R* and *R v Teleu* to draw the distinction between similar cases where stolen property was recovered and those where property was never recovered. Both the Prosecution and defence have seem to agree that the time spent in custody is punishment enough, furthermore, defence had also submitted that should this court consider a custodial sentence, then a suspension should be considered.
14. I gather from the case of *Eapa v R*, that when the Complainant realised that his CD player and speakers were missing, his search eventually ended up with the Appellant, who confessed to taking the missing items<sup>3</sup>. In this case, had it not been for the CCTV cameras you would have walked away freely with the speakers you stole and could have sold it for your own benefit.

<sup>2</sup> [2017] SBMC 46; Criminal Case 958 of 2017 (26 September 2017)

<sup>3</sup> [2001] SBHC; HV-CRC 248 of 2001 (2 November 2001)

15. In comparing the case of *Eapa v R, Regina v Teleu* and the one at hand, the Appellant in *Eapa v R*, was a first time offender; furthermore, he confessed right away to removing the missing items. Prosecutions never disclosed this significant part of the evidence when the case was heard at the lower court, had they done so, the Magistrate could have considered suspending the custodial sentence imposed<sup>4</sup>. With regards to the case of *Teleu*, the Accused had seen that the Complainant's vehicle was left unattended, hence he entered the vehicle and took the Complainant's money, but was seen by the Complainant as he was coming out of the vehicle. The Complainant called after him but he ran away. It was only with the help of the Police officers conducting foot beat patrol that he was caught and arrested. At the time of his offending, *Teleu* was serving a bound-over sentence<sup>5</sup>.
16. In this current case, I do not think that you were planning to get caught or even confessing to stealing the item had you escaped and hidden yourself for a long period of time. People who share the same mindset as you should be warned off the consequences they will face once caught, arrested and charged to appear before the court.
17. The case of *Eapa v R* occurred some 22 years ago, and regardless of the harsh sentences imposed by the courts back then, the offence of Simple Larceny continue to increase in a very sophisticated and advanced manner. I say this due to the tactics used nowadays and the use of weapons to attack should their plots be interfered with. Courts should now consider imposing sentences that totally cripples the very urge to steal from others. Habitual thieves need to realise that the act of stealing is proof of laziness and lack of plans for the future. Relevant authorities need to step up and address the issue of stealing, otherwise it will remain an issue that future generations will continue to suffer from.
18. It comes back to those of us who have children to ensure that children are being thought about the consequences of stealing. While the act you did on the 20<sup>th</sup> of September 2022 was done by yourself, I blame your parents for failing you in their parental duties towards you. The fact that you are now in court is evidence that there was minimal discipline and teaching throughout your upbringing. Even if there was discipline during your upbringing and that your urge to steal was taken from peer influence, minimal efforts were done to correct you, hence your audacity to walk into someone else's property in broad day light to steal.
19. I note from the defence submission that you are a repeated offender for the offence of Simple Larceny, while I did not receive a copy of your antecedent, I was told that this was in relation to an incident back in 2011 which is about 11 years ago. In *R v Su'umania*, CJ Ward highlighted the following when sentencing offenders with previous convictions:  
*"When sentencing persistent offenders the court must make protection of the public the principal consideration in determining the length of sentence."*  
*"It is well settled however that even in such cases the sentence must still be appropriate to the offence and the court must be careful not to sentence the accused for his previous convictions as was explained by Spreight JA in Kaboa v. R (1980/81) SILR 43 at 46. Thus, whilst previous good character may reduce a sentence, previous bad character cannot increase it beyond the proper term but the court can and should consider previous convictions in assessing the character of the man before it and the likelihood of him changing his ways (underlined mine)"*<sup>6</sup>.
20. Having quoted the above case, I refer further to the case of *R v Ball (1951) 35 CrAppR 164* where, Hilbery J, in his judgment of the Court of Criminal Appeal, commented at pages 165 -166:  
*"In deciding the appropriate sentence a Court should always be guided by certain considerations. The first and foremost is the public interest. The criminal law is publicly enforced; not only with the object*

<sup>4</sup> [2017] SBMC 17; CMC-CRC 388 of 2017 (6 June 2017)

<sup>5</sup> Above n 4

<sup>6</sup> (Unrep. HCSI-CRC 00287)

of punishing crime, but also in the hope of preventing it. A proper sentence, passed in public, serves the public interest in two ways. It may deter others who might be tempted to try crime as seeming to offer easy money on the supposition, that if the offender is caught and brought to justice, the punishment will be negligible. Such a sentence may also deter the particular criminal from committing a crime again, or induce him to turn from a criminal to an honest life. The public interest is indeed served, and best served, if the offender is induced to turn from criminal ways to honest living' as referred to in *Anna Langley v R* (supra)<sup>7</sup>.

21. Reference is drawn to the cases of **Ball** and **Su'umania** as to how I will deal with the previous convictions referred to by the defence. Parties must acknowledge that unlike non previous convictions and the effect it has in decreasing a person's punishment, previous convictions do not increase a person's punishment. However, it is an essential tool in assisting the court to study the character of an offender to ensure if there is a likelihood for change or not.
22. While I thank the defence for referring me to a number of cases which were very helpful towards reaching your final sentence, I am also reminded by the comments uttered in the case of **Joel Likilia & Allen Kokolabu v R** [1998/89] SILR, where the court stated, and I quote:  
*"Sentencing is not a process that follows exact mathematical rules. Circumstances and people vary and it is undesirable to consider such comparisons as more than a very imprecise guide."* (Emphasis added)<sup>8</sup>.
23. This morning, I give you credit for the following:
  - a) Your early guilty plea;
  - b) Your willingness to face the consequences of your wrong-doing (remorseful);
  - c) The fact that the stolen speaker had been retrieved shortly after you stole it;
  - d) The period spent in custody.
24. On the other hand, due consideration is also paid to the seriousness of this offending and how prevalent it has become and will continue to be if the courts and other relevant authorities are doing minimal attempts and efforts to deter this offending. The place of offending is not within the community you reside in, that is Mbokona, hence, it means that you have planned to go over to the place of offending with a bag that will assist you to achieve the plan you have formulated to steal something from Ausmart, in this case, a speaker valued at \$240.00.
25. I note from the number of years that have lapsed from the cases of Eapa and Teieu to be 22 years ago and 5 years ago respectively.
26. The question now is how best should this court warn you from ever committing this offence again?
27. I refer to the comments in the case of **R v Rafita**, where the court highlighted the following:  
*"It is time for our Courts to better utilise the scope of the maximum sentence made available to them by the legislature in a way that better reflects current sentencing and community needs and in a way that recognises the apparent contemporary ineffectiveness of benchmarks set so long ago"* [emphasis mine]<sup>9</sup>.
28. In all sentences, there is a significant need for deterrence, both specific and general, there is also the need for rehabilitation, prevention and retribution. The public interest is best served when there is a balance between individual safety and the need to turn a wrong-doer from his or her evil actions.

<sup>7</sup> R v Ball (1951) 35.CrAppR 164

<sup>8</sup> [1998/89] SILR

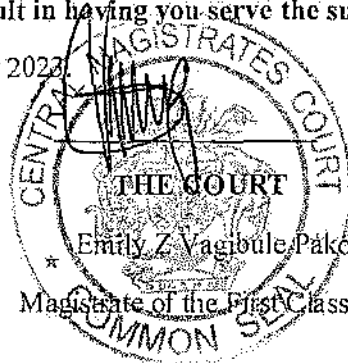
<sup>9</sup> [2012] SBHC 150; HCSI-CRC 63 of 2011 (3 December 2012)

29. Hence, for an offence carrying a maximum penalty of 5 years imprisonment, and having weighed the entirety of this matter, I hold the strong view that a custodial sentence is appropriate. While I understand the speaker was relieved, you must still meet the consequences of your decision making and wrong doing in order to realise that there is and will never be any happy ending if you continue this kind of mind-set and behaviour.
30. It is with this that I now order as follows:

**ORDER**

- (1) Mr John Levae, for the offence of Simple larceny, contrary to section 261 (1) of the Penal Code, you are hereby sentenced to 9 months imprisonment taking into account that you have spent 1 month in custody;
- (2) The remaining balance of 8 months is to be suspended for 2 years;
- (3) Order 2 is subject to the condition that you must not re-offend or commit any offence throughout the duration of your suspended sentence;
- (4) Re-offending will result in having you serve the suspended term.

Dated this 17<sup>th</sup> day of February 2023.



Emaly Z. Vagibule Pakoa (Mrs)

Magistrate of the First Class