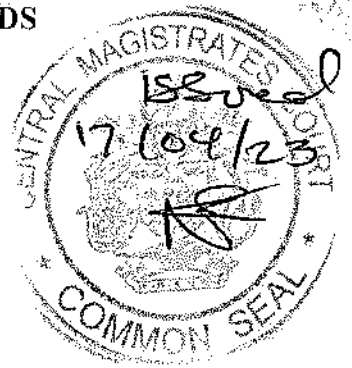


IN THE CENTRAL MAGISTRATES COURT OF SOLOMON ISLANDS
AT HONIARA

(Criminal Jurisdiction)

Criminal Case No: 319 of 2022

REX-V-ERICK KOFIGITA



Coram: HOLLISON F (PRINCIPAL MAGISTRATE)

Appearances:

Ms Myrella Claven, Senior Legal Officer, ODPP, for the Crown

Mr Ron D Pulékera, Principal Legal Officer, PSO, for the Defendant

Date of Ruling: 17th April 2023

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

SENTENCE

INTRODUCTION

1. The defendant pleaded guilty to one count of House Breaking and committing felony contrary to section 300(a) of the *Penal Code* [Cap 26]. I now convict him based on the pleas entered on all counts.

FACTS

2. The defendant is an adult male of Thitiro village, Maringe District in the Isabel Province.
3. The complainant is Silas Koha.
4. The complainant runs a canteen at his house.
5. On 10th September 2020 at Thitiro, the complainant, his wife and daughter were sitting at their house. Not long after the wife and daughter left for gardening.
6. The complainant locked his house including his canteen and went to the toilet. The distance between the house and the toilet is about 7-10 meters.
7. Whilst at the toilet, he heard someone tried to open the door of his house and he hurried back to his house.

8. Upon arrival at the front door inside of his house, he noticed that the hinge of the door to the canteen was already dislocated,
9. The complainant, pushed the door twice but it could not be open. He managed to open the door on his third attempt.
10. When the door was opened, the complainant saw the defendant standing inside his canteen.
11. The complainant was shocked. He asked the defendant to put back anything he had taken inside the canteen.
12. The defendant returned the amount of SBD 150 and escaped.
13. The defendant was later arrested.

DISCUSSION AND ANALYSIS

14. The principles of sentencing such as punishment, retribution, deterrence and rehabilitation must be taken into account.
15. In *Regina v Badi* [1988] SPLawRp 12; [1988] SPLR 348 (21 December 1988)¹, his Lordship Ward CJ stated as follows:

For a normal burglary case, the only appropriate penalty must be an immediate custodial sentence. Where the burglary is not aggravated in any way, the starting-point for an adult first offender should be two years' imprisonment. From that point, this Court should consider any aggravating factors such as committing the offence with the support of others, theft of personal items that can be little or no value to the thief, general ransacking of the house, wanton damage, pre-planning, and the degree of breaking necessary to gain entry. If such matters are present they should add to the penalty. Where masks are used, weapons are carried, threats are made, or similar escalations in the seriousness of the offence are present, the penalty should be further increased and it would rarely be appropriate to pass a sentence of less than four years.

Factors to be considered

16. **Maximum sentence.** The maximum sentence for house breaking contrary to section 300(a) is 14 years imprisonment which means this is a serious offence.

Aggravating features

17. The aggravating factors are as follows:

Pre-Meditation and Planning

¹ *Regina v Badi* [1988] SPLawRp 12; [1988] SPLR 348 (21 December 1988)

18. The manner in which the offence was committed depicts premeditation on the part of the accused. As soon as the complainant, walked to the toilet, he quickly broke into the defendant's house and canteen.

Severity of offence/Properties stolen/loss

19. The defendant had stolen the sum of SBD 150, however, it was recovered, because the complainant, reacted swiftly to the suspicious sound that he heard coming from house whilst he was in the toilet. The hinge to the door of the canteen was also dislocated which means, damage was occasioned to it.
20. There was no mention of any weapon in the agreed facts, however, the Crown stated in court, a knife was used to gain entry.

Mitigating Features

21. The mitigating factors are as follows: early guilty plea, remorse, first time offender, cooperation with the Police and the defendant's personal circumstances including his age and youthfulness.

COMPARATIVE SENTENCES

House Breaking

22. In *Regina v Onumumu* [2016] SBMC 15; Criminal Case 181 of 2016 (13 June 2016)²; the defendants were sentenced to 30 and 31 months imprisonment respectively for one count of office break-in contrary to section 300(a) of the *Penal Code* [Cap 26].
23. In *Regina v Meke* [2018] SBHC 13; HCSI-CRC 123 of 2017 (22 January 2018)³; the defendant pleaded guilty to one count of house breaking with intent to commit felony, contrary to section 301 of the *Penal Code*. Further, he pleaded guilty to two counts of rape, contrary 136 F (i) (a) of the Penal Code (Amendment) Sexual Offences Act 2016 (Cap. 26). The defendant was sentenced to two years imprisonment for the offence of house breaking and eight years imprisonment each for the two counts of rape which were all ordered to run concurrently.
24. In *Gore v Reginam* [2007] SBHC 53; HCSI-CRC 84 of 2006 (25 May 2007)⁴; the defendant was convicted in the magistrate's court for the following offences:

- 1) Stealing one black basket, two blankets, two pillow cases from a dwelling house belonging to Tom Seka on the 18th of March 2005.

² *Regina v Onumumu* [2016] SBMC 15; Criminal Case 181 of 2016 (13 June 2016);

³ *Regina v Meke* [2018] SBHC 13; HCSI-CRC 123 of 2017 (22 January 2018)

⁴ *Gore v Reginam* [2007] SBHC 53; HCSI-CRC 84 of 2006 (25 May 2007);

- 2) Stealing the sum of \$52.00, one tool bag and one pocket knife from the Methodist Church Office at Gizo on 16th March 2005.
- 3) Stealing \$320.00 from a woman in the same house he was living in on 18th March 2005.
- 4) Breaking into the Gizo Community High School and stealing a large number of property, with total value of \$1,415.00 on 16 March 2005.
- 5) Escaping from lawful custody on 28th March 2005.

He was sentenced to 12 months imprisonment for one count of breaking into the Gizo Community High School and for committing theft. The High Court although allowed the appeals for the other counts, it did not disturb the sentence with respect to one count of house breaking and confirmed the 12 months imprisonment imposed in the Magistrates Court.

25. The offences of burglary or house breaking contrary to sections 300 and 301 of the *Penal Code* [Cap 26] customarily would attract immediate custodial sentences. The normal sentencing range for this offence ranges from custodial sentences from a couple of months up to 3 years imprisonment.

Starting Point

26. Thus, I am of the view that an immediate custodial sentence must be imposed for the defendant. The appropriate starting point in my view is 24 months imprisonment.
27. I note the aggravating features present in this case such as gaining entry by force into the building/canteen and the theft of SBD 150 (which was recovered by the complainant) and the damage occasioned to the door, hence, I increase the sentence by 12 months which gives a total of 36 months imprisonment.⁵

Mitigating Factors

28. **Early plea and remorse.** The defendant entered an early plea in this case. This is also a sign of remorse and acceptance of his wrongdoings. Thus, I deduct 12 months (from the 36 months).
29. **First offender.** The defendant has a previous clean and good character until his conviction this afternoon. This is actually his first time to be convicted for any crime. Thus, I deduct another 2 months.
30. **Cooperation with Police.** He cooperated well with the Police. I deduct another 2 months for that.
31. **Personal circumstances and chances of rehabilitation.** The defendant although an adult is still quite young and has a very good prospect of rehabilitation. Thus, I deduct 4 months.

⁵ *Pitamaha v Regina* [2005] SBHC 45; HCSI-CRC 003 of 2005 (11 March 2005).

32. **Delay.** The offence occurred in the 2020 but it took 2 years for the charge to be laid. I deduct another 2 months to reflect this.

33. I am satisfied that 14 months imprisonment is proportionate to the present offending.

CONCLUSION

34. After assessing and balancing the core principles of sentencing such as punishment, deterrence and rehabilitation, I hereby sentence the defendant to 14 months imprisonment for one count of house breaking contrary to section 300(a) of the *Penal Code* [Cap 26].

35. **Pre-Sentence-Custody.** The sentence must be retrospectively commenced on the date of first remand being the 16th March 2023.

36. With this custodial sentence, I hope it transforms the life of the defendant and instill in him good manners and basic respect for other people's properties.

ORDERS

37. The orders of the Court are as follows:

[1] The defendant is sentenced to 14 months imprisonment for one count of house breaking contrary to section 300(a) of the *Penal Code* [Cap 26].

[4] **Final Sentence.** The defendant shall serve a total of 14 months (1 year and 2 months) imprisonment for the offence.

[5] **Pre-Sentence-Custody.** The sentence must be backdated to the date of first remand being the 16th March 2023.

[6] Right of Appeal within 14 days.

[7] The Court so orders.


PRINCIPAL MAGISTRATE FELIX HOLLISON
THE COURT