

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

(Criminal Jurisdiction)

Criminal Case No: **569 of 2022**

REX-V-DAVID DAOMAE AND BILLY BUGA



Coram: HOLLISON F (PRINCIPAL MAGISTRATE)

Appearances:

Mr Lindsay Tamaika, Senior Legal Officer, ODPP, for the Crown

Ms Rochelle Palmer, Principal Legal Officer, PSO, for the Defendant

Date of Ruling: 21 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 defendants Mr David Daomae and Mr Billy Buga pleaded guilty to one count of House Breaking and committing felony contrary to section 300(a) of the *Penal Code* [Cap 26] read with section 21(a) of the *Penal Code* [Cap 26]. I now convict each of them.

FACTS

2. The incident occurred on the 12th December 2022 at Honiara on Guadalcanal between 1am and 2am early in the morning.
3. Mr Daomae comes from Anomasu village, Fataleka, Malaita Province and Mr Buga hails from Ata village, Malaita Province.
4. The defendants are residents of Mount Austin area, Central Honiara, Guadalcanal.
5. The complainant is Mrs Jean Miller and the incident occurred at her family's dwelling house at Tasahe area, West Honiara.

6. Mr Billy Buga entered the area of the complainant through the gate and use a knife to open the main door of the house. He also opened a door to a room inside the house.
7. Mr David Daomae was waiting for Mr Buga outside the gate and on the look for anyone that might come to the area.
8. Mr Billy Buga took some items from the complainant and her family. The items are as follows:
 - 1) 1 x touch screen red magic phone cost \$ 8,000;
 - 2) 1 x iPhone cost \$ 7,000
 - 3) 1 x Samsung phone (tablet) cost \$ 2,500;
 - 4) 1 x Power bank cost \$750;
 - 5) 1 x External drive cost \$ 1, 150.
9. The total value of the items is SBD 19, 400.
10. The following items were recovered by the Police and the complainant:
 - 1) 1 x Samsung phone (tablet) cost \$2, 500;
 - 2) 1 x iPhone cost \$7,00;
 - 3) 1 x touch screen red magic phone cost \$8,000.

DISCUSSION AND ANALYSIS

11. The principles of sentencing such as punishment, retribution, deterrence and rehabilitation must be taken into account.
12. In ***Regina v Bade*** [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.

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

Factors to be considered

13. **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

14. The aggravating factors are as follows:

Pre-Meditation and Planning

15. The manner in which the offence was committed depicts premeditation on the part of the defendants. They made sure that their plan was executed at night when everyone is normally asleep. Mr Buga is the main offender who entered the house and Daomae remained outside the house on the lookout for anyone who might disturb their plan.

Use of weapon

16. Mr Buga used a weapon to open the door. This is an aggravating feature.

Severity of offence/Properties stolen/loss

17. The defendants had stolen a number of properties. Most of them were recovered but not the power bank and the external drive.

Group offending

18. This offence is committed by more than one person. This aggravating this offending.

COMPARATIVE SENTENCES

House Breaking

19. 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].

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

20. 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.
21. 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) 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.

22. 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 common sentencing option for this offence is an immediate custodial sentence ranging from a couple of months up to 4 years imprisonment.

Starting Point

23. In *Wong v R* [2001] HCA 64; 207 CLR 584; 185 ALR 233; 76 ALJR 79 (15 November 2001)⁵, Kirby J said at [89]:

In Lowe v The Queen[100], Mason J explained that consistency in criminal punishment is "a fundamental element in any rational and fair system of criminal justice". Inconsistency, he declared, "is calculated to lead to an erosion of public confidence in the integrity of the administration of justice" and is "regarded as a badge of unfairness and unequal treatment

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);

⁵ *Wong v R* [2001] HCA 64; 207 CLR 584; 185 ALR 233; 76 ALJR 79 (15 November 2001)

under the law"[101]. He was there speaking of disparity between the sentences imposed on co-offenders. However, the principle is one of general application.

24. The consistency in terms of sentencing between co-offenders is very important, however, as Kirby J noted in *Wong*,⁶ it is only a principle of "general application", which in my view the court may under its discretion can still deliver sentences for co-offenders based on the level of their participation and criminal responsibility in the offending. Based on the level of culpability, Buga should logically receive a much higher sentence than his co-accused Mr Daomae.
25. An immediate custodial sentence must be imposed for both defendants as per *Bade*.⁷ The appropriate starting point in my view is 24 months imprisonment for each of the defendants.

Aggravating Factors

26. I note the aggravating features present in this case such as gaining entry by use of weapon, theft of several items enumerated above, group offending by two people, commission of the offence at night and so forth, and I add another 18 months.⁸ (This gives a resulting sentence of 42 months imprisonment)

Mitigating Factors

27. In terms of the mitigating factors, I will deal with the defendants separately because Buga is a repeated offender, Daomae is a first time offender, and they also have different personal circumstances. It is on the mitigating factors that the respective end sentences of the offenders would depart from each other.

Buga

28. I will now deal with Mr Buga first.
29. The defence submitted that he is not a first time offender. He has a string of past convictions that include offence of similar nature; burglary and simple larceny. The defendant has 16 criminal records. However, the defence argued that according to the case of *Pitamama*⁹, it was enunciated that while previous good character reduces a sentence, prior conviction will go towards the defendant's character and not increase the sentence to more than the proper term.

⁶ *Wong v R* [2001] HCA 64; 207 CLR 584; 185 ALR 233; 76 ALJR 79 (15 November 2001)

⁷ *Regina v Bade* [1988] SPLawRp 12; [1988] SPLR 348 (21 December 1988)

⁸ *Pitamama v Regina* [2005] SBHC 45; HCSI-CRC 003 of 2005 (11 March 2005).

⁹ *Pitamama v Regina* [2005] SBHC 45; HCSI-CRC 003 of 2005 (11 March 2005).

Mitigating Factors

Mitigating Features for Billy Buga

30. I take into account the following mitigating factors for Mr Buga: early guilty plea, remorse, cooperation with the Police, and the defendant's personal circumstances.
31. The defendant is single and 33 years of age. He has 4 sisters and 4 brothers.
32. He reached grade 1 level in his education.
33. Mr Buga is a serial burglar and he was released last year after serving his previous imprisonment terms. He is not a first time offender and he was the main offender in the offending. I am wondering whether he can even learn given the history that he has as a repeated offender.
34. I deduct 12 months to reflect all his mitigating factors.
35. I am satisfied that 30 months (2 years and 6 months) should be appropriate for Mr Buga taking into account that he is the principal culprit in this present case.

Mitigating Features for David Daomae

36. The mitigating factors for Mr Daomae are as follows: early guilty plea, remorse, first time offender, cooperation with the Police, the level of culpability is lesser than Mr Buga and the defendant's personal circumstances including his age and youthfulness. He also has a higher chance of rehabilitation than Buga.
37. The defendant is 20 years old.
38. He is married. His wife is currently pregnant.
39. He has 7 sisters. He is the youngest child in his family.
40. Prior to his arrest, he worked for Ariko Timber Yard. He normally earns 600 dollars per fortnight.
41. He reached grade 3 level in his education.
42. The defence submitted that Mr Daomae's level of participation in the present case is very minimal compared to all the cases discussed. He was standing outside the gate watching his co-accused went inside the house and stole the items. The defence contended that the term of

imprisonment for Daomae should be significantly less than that of his co-accused. I agree with the defence's suggestions in relation to this aspect.

43. I take into account all his mitigating factors, and I deduct 22 months from the 42 months imprisonment.
44. Hence, I am satisfied that 20 months (1 year and 8 months) imprisonment is appropriate for Mr Daomae taking into account his level of culpability.

CONCLUSION

45. Burglary and theft related offences are on the rise in our country especially in the nation's capital. The police and the courts must take a proactive and deterrent approach to address this issue and that is exactly what I am trying to do. The public must also support the police in this endeavor and to report such occurrences to the relevant authorities. As citizens of this country, it is our civic duty to look out for each other. I take judicial notice of the fact that it is no longer safe for someone especially for women, girls and the elderly to walk with a property such as a phone or bag within the streets of Honiara. We will be the host city for the Pacific Games 2023 later in November and it is important for us to make sure that our city is safe for us locals and our visiting international friends.
46. After assessing and balancing the core principles of sentencing such as punishment, deterrence and rehabilitation, I hereby sentence the first defendant Mr Buga to 30 months (2 years and 6 months) imprisonment and Mr Daomae to 20 months (1 year and 8 months) imprisonment for one count of house breaking contrary to section 300(a) of the *Penal Code* [Cap 26] read with section 21(a) of the *Penal Code* [Cap 26].
47. **Pre-Sentence-Custody.** Their respective sentences must be retrospectively commenced on the 14 December 2022 being the date of first remand.

ORDERS

48. The orders of the Court are as follows:

- [1] The defendant Mr Buga is sentenced to 30 months (2 years and 6 months) imprisonment for one count of house breaking contrary to section 300(a) of the *Penal Code* [Cap 26].
- [2] The defendant Mr Daomae is sentenced to 20 months (1 year and 8 months) imprisonment for one count of house breaking contrary to section 300(a) of the *Penal Code* [Cap 26].

[4] **Pre-Sentence-Custody.** The defendants' respective sentences must be backdated or retrospectively commenced on 14th December 2022, being the date of their first remand.

[5] Right of Appeal within 14 days.

[6] The Court so orders. :


PRINCIPAL MAGISTRATE FELIX HOLLISON
THE COURT