

IN THE CENTRAL MAGISTRATES COURT
IN THE SOLOMON ISLANDS

Criminal Case No: 148 of 2023

In the criminal jurisdiction

BETWEEN: REX (POLICE PROSECUTIONS)

V

AND: DAVID EBUTUA

PPD: PC John Saugaro

Defence: Ms Delilah Kukura

Date of sentencing submissions: 4th of July 2023

Date of sentence: 14th of July 2023

SENTENCE

1. David Ebutua, you were initially charged with three counts of Common Assault and one count of Intimidation. After a plea bargain initiated by defence and after sometime of adjournment for prosecution to make a defence, one of the counts for common assault was withdrawn along with that of intimidation.
2. On the 4th of July, you were arraigned on an amended charge, after going through the agreed facts, the court was of the view that the second count in the amended charge was not supported by any evidence as per the agreed facts. The second count was eventually withdrawn and I therefore recorded a guilty plea on your part in relation to the single count of common assault that remains in the amended charge.
3. The offence of common assault is rightly defined and highlighted under section 244 of the Penal Code. This offence entails a maximum penalty of one-year imprisonment. Such penalties obviously reflect the level of seriousness involved and the level of tolerance that the public should have towards it.
4. I take judicial notice of how prevalent this kind of offending is. The public is once again reminded to avoid taking the law into your own hands, as you are likely to end up in a position that might be of detriment to you. It is so common for assaults of this kind to occur when there is a built up of disagreements that becomes triggered when alcohol comes into play.
5. It is also very obvious these days that people tend to blame their actions on alcohol without realising that no one had forced them to consume alcohol. Consuming alcohol on a voluntarily basis is an obvious decision, hence, whatever action or words that stems out of someone who is under the

influence can also be safely regarded as parts and parcel of the whole scenario. However, the unique thing about our justice system is, it highly requires cases to be dealt with based on their own set of facts and circumstances.

6. Having withdrawn three of the 4 counts against you and having amended the agreed facts, I note that the remaining count is in relation to the allegation that you grabbed Mr Rodeny Oesuku's t-shirt around his neck and kicked his back. Facts state that you were drunk when you pulled up at the Borderline area in your car. You parked the car in front of the victim's market stall and started accusing. It was after you were accusing him that you allegedly committed the act described in the remaining count which you pleaded guilty to.
7. With the limited information before me, I can only infer that your actions were unprovoked and unwarranted. You were said to be drunk and that the incident was said to have occurred between 12:00 pm to 1:00 am.
8. PC Saugaro has asked this court to impose a message of both specific and general deterrence specially to warn people living in and around the Borderline area from taking the law into their own hands.
9. Before going further, I wish to address the issue on whether or not conviction should be entered against you. Prosecutions has asked this court to either impose a sentence of fine or bound-over. Defence on the other hand has asked that this court impose a bond of good behaviour. I then referred to the case of **Regina v Tapoika** in which Justice Bird highlighted that sentences or punishments such as fines, imprisonments, bound-overs and disqualification of licenses (traffic cases) are only reached after the court enters conviction on an Accused person. Her Ladyship went on further to say that when the court decides not to enter an absolute conviction, it is simply concluding that given the nature and circumstances surrounding the offending, a conviction is not warranted, hence and in effect an Accused is therefore discharged from the charge at hand. On the other hand, and still on the nature and circumstances of the offending, the court can invoke a conditional discharge on an Accused provided that they enter into a bond of good behaviour.
10. Section 35 of the Penal Code provides for discharging an offender from the charge against him or her, based on the circumstances and nature of offending. I gave parties the opportunity to address the question on whether or not a conviction should be entered against you or not. The response by defence was that in the event the court enters conviction, it would be detrimental on your part as it will disturb your chances of joining the Labour Mobility Scheme (LMU) or going overseas. Ms Kukura also highlights the need to consider that a reconciliation had already taken place and that the victim is only related to you as your nephew, and that the effect of entering a conviction would only cause disunity and disharmony to the both of you. I am also told that the victim is living with you, hence the reason as to why a conviction should not be entered.
11. PC Saugaro on the other hand strongly disagrees to the proposition made by defence, asking this court to consider the fact that the offence at hand is quite prevalent at the Borderline area and people must be warned through whatever sentence this court will impose on you. PC Saugaro further states that he sees no urgency for you to travel overseas either on medical grounds or work-related purposes. He went on further to compare offenders charged with consumption of liquor in certain public places, and the majority of whom end up getting convicted. He strongly believes that common assault is a serious offence as compared to that of consumption of liquor in certain public places, based on their respective maximum penalties. The former holds a maximum penalty of one-year imprisonment whilst the latter is only 2,000 penalty units.
12. In my view, and having considered the wordings of section 35 of the Penal Code, I do not think the circumstances involved are sufficient for this court to consider invoking this said section. I say this on the basis that I am not provided with any sworn evidence telling me about his character or his

- health or mental condition. I remind parties again that we should not give evidence from the bar table but rather through the relevant mode of tendering evidence as required by the Evidence Act.
13. Furthermore, I do not believe that there is anything extenuating or trivial about any given act of common assault. It is quite long over due for both the public and the courts to enhance collaborative and lawful steps in ensuring that mindsets giving rise to this kind of offending be identified and effectively mitigated.
 14. Ms Kukura has also referred me to the fact that a sum of money was already paid as part of a reconciliation ceremony that took place sometimes ago between you and the victim. I believe this was highlighted to justify why a conviction should not be entered.
 15. Hence, having said this and having assessed the relevant parts of the agreed facts that are substantial to the charge at hand, I now enter conviction against your own guilty plea.
 16. In terms of the mitigating factors, I must give you credit for your early guilty plea which in my view reflects your willingness to face the consequences of your own wrong doing. It also reflects remorse on your part. I note also that you have been very faithful in attending to your court hearings and also the high prospect you have to achieve change.
 17. I am told that a reconciliation had also taken place. In terms of reconciliations, I am guided by the comments uttered in the case of **Regina v Asuana**, where the court held:

Custom compensation must be considered by the Court in assessing sentence as a mitigating factor if it goes to show genuine contrition. The scale of payment may give some indication of the degree of contrition. The court must avoid attaching such weight to it that it appears to be a means of buying oneself out of trouble¹.
 18. I highlighted the case of Asuana to clarify my position in treating the reconciliation that took place, if true, as any of the other normal mitigating factors that the courts usually consider in giving sentences.
 19. I am also told about the small businesses ran by your wife and yourself. To me, it shows that you are an independent man who no doubt should be in a role model position to the young children living at Borderline. I say this on the basis that as a very young person you have a very high prospect for change.
 20. On the other hand, I note that the offending occurred at night time, and that you were drunk. Furthermore, the actions executed were uncalled for and unprovoked. The fact that the maximum penalty for this offence is one-year imprisonment should not only ring a bell on you as to the seriousness of such an offence, but should remain with you for as long as you are alive to prevent you from ever putting yourself in this position ever again.
 21. I am sure the past months in which you have been coming to court has somehow taken a toll on you, but this was exactly what you should have foreshadowed before deciding to consume alcohol, a mechanism that triggers the anger and rage within someone to explode all of his or her disagreements towards others. As an adult, you should always choose common sense and voice out your disagreements in an amicable as oppose to piling up everything up until you consume alcohol and snap.
 22. This afternoon I am reminded once again by the remarks in the case of **R v Ball**, where the court stated the following:

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 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

¹ [1990] SILR 201 (12 October 1990)

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 living².

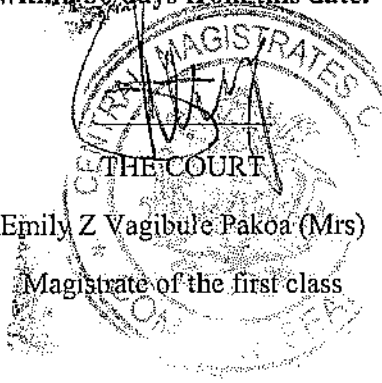
23. It must be the aim in all sentences that when punishment is inflicted on any offender, it should not only bear its literal meaning but should also assist the offender to turn away from any form of wrong doing and to eliminate any attitude or mindset that inevitably gives rise to any conflicts with the laws of this country.
24. This afternoon, I wish to highlight the principles of both specific and general deterrence, rehabilitation, prevention and retribution. I am further guided by the principle that each case must be disposed off in a manner appropriate to its own set of facts and circumstances³.
25. Hence, having said of these, I now order as follows:

ORDER:

- i) Mr David Ebutua, for the offence of common assault, contrary to section 244 of the Penal Code which I find you guilty on and have accordingly entered conviction on your part, I hereby sentence you to a sentence of bound-over for a period of 6 months in the sum of \$300.00;
- ii) Should you reoffend in the period specified, the court will highly consider re-sentencing you by way of ordering you to pay the sum of \$300.00 as specified in your bound-over sentence;
- iii) Right of appeal applies within 30 days from this date.

Dated this 14th of July 2023.

Emily Z Vagibule Pakoa (Mrs)
Magistrate of the first class



² R v Ball (1951) 35 CrAppR 164

³ [1998/89] SILR