

IN THE CENTRAL MAGISTRATES COURT  
OF SOLOMON ISLANDS  
*Criminal Jurisdiction*  
Criminal Case No. 312 of 2022



REX  
V  
JUNIOR GASA  
&  
RICKY ALISTA

*Dates*

Plea and Sentencing Hearing: 7 August 2023

Sentence: 5 September 2023

Coram: *PM Hilly*

Prosecutions: *Ms Monica Rehomora (ODPP)*

Defence: *Ms Alice Silas (PSO)* for Junior Gasá

*Ms Jennifer Happilyn (PSO)* for Ricky Alister

**SENTENCE**

**Introduction**

- 1) The defendants are charged together on one count of *Housebreaking and Committing Felony* contrary to section 300(a) of the *Penal Code* and section 21(c) of the *Penal Code, Cap 26*.
- 2) They both pleaded guilty to the charge on 7 August 2023. I formally enter a conviction on each of them for their plea of guilty to the charge. They now appear for their sentence.

**Maximum Penalty**

- 3) The maximum penalty for the offence they are charged with is fourteen years imprisonment.

**Facts**

- 4) At about 9:30pm on 13 January 2022, the victim Mr Basil Longamare locked his store and left for his house to sleep. The defendants met with other boys and they went to the victim's shop that night. When they arrived at the store, the defendant Junior Gasá took a timber and climbed up to the window. When he reached the window, he used a pliers to cut the wire on the window and entered the store. Junior Gasá went into the store and took about \$500 at the counter of the store then he went out through the window. The defendant Junior Gasá shared the money with Hiu Hebala and he took \$200.

- 5) After the window of the store was forced open by Junior Gasá, the other boys instructed the defendant Ricky Alister to enter into the store after Junior Gasá.
- 6) The defendant Ricky Alister went into the store and whilst he was inside the store, he carried out one carton of Sara Whiskey and passed them on to Hiu Hebala. The estimated cost of the carton of Sara Whiskey was around \$200.
- 7) In the morning on 14 January 2022, the victim went into the store and discovered that there was no cash in the store. Upon his search, he saw the window of the store was open and the wires which had closed the window were cut off. He also noticed that two cartons of Sara Whiskey cola beer plus twelve cans of Sara Whiskey cola beer were missing.

**Personal Circumstances**

- 8) Junior Gasá:
  - a. He is 23 years old.
  - b. He attended GS Faisi Technical Institute in 2021. He is currently a first-year student at Don Bosco. I do not have any verified information on this so that I can consider. As such, I am not persuaded with the defence submissions on this because they have not provided any confirmation from the Don Bosco with details of Mr Gasá's enrolment and study program.
- 9) Ricky Alister:
  - a. He is 22 years old.
  - b. He is currently residing with his grandmother.
  - c. He reached Form 5.
  - d. He is unemployed and only earn money through casual employment.

**Mitigating Factors**

- 10) I consider the following mitigating factors present in this case:
  - a. **Early Guilty Plea:** The defendants' plea of guilty on the charge has saved the courts time and resources of having to go through a full trial. Their guilty plea reflects their remorse and acceptance of the consequences of their actions.
  - b. **First-time offender:** The defendant is a first-time offender with no previous conviction.
  - c. Ms Silas submitted that her client Mr. Gasá cooperated with the Police during his investigation and had admitted to the offending. She further submitted that there was delay in disposing of this matter. The defendants were charged on 29 July 2022. Their case was called during the Buala Circuit in August 2022. It is clear from the courts records that the defendants did not appear for their case and have been under Warrant of Arrest since 16 August 2022. They had only

appeared recently on or about 14 June 2023. To argue that there was a delay in finalising this matter is ill-considered and irrational. Parties must be careful when they argue on the issue of delay in the future. Delay when argued must show that it was unreasonable and unacceptable, therefore, the defendant must be given the consideration by a court in its sentence. The delay in disposing of this matter falls squarely on the part of the defence.

### Aggravating features

11) There are aggravating features noted in this case:

- a. *Pre-meditated crime and the way the crime was committed*: Prosecutions submitted that there was pre-planning involved. The involvement of each defendant in planning with the others shows that the offending is not accidental but a result of plan that was carefully orchestrated. The defendants planned on or about 9:30pm when they knew the victim had closed his store and left for his home. Defendant Gasu used a timber to climb the store's window and used pliers to cut the wire of the window to enter the store. He did not stop there but whilst in the store, he stole \$500 at the store's counter, a cunning and thoughtless action that led them to committing felony. I agree that this is an aggravating feature that this court must consider when sentencing the defendants.
- b. *Financial Loss*: The carton of Sara Whiskey costs \$200 and the cash stolen was \$500. A total of \$700 was the financial loss suffered by the victim's business. The stolen properties were never recovered.
- c. The defendants did not commit the offence alone. They were with a group of boys and committed the offence with each other's support. Furthermore, the fact that the offence was committed at night aggravated the circumstances of the offending.
- d. *Prevalence*: Housebreaking and committing felony has increased over the year increase most communities around the country today. The courts must therefore be vigilant and address this lawlessness through the sentences it imposes on defendants and that potential offenders are taught a lesson.

### Sentencing Consideration

12) ~~Housebreaking and committing felony is a very serious offence as shown in the maximum penalty of 14 years imprisonment. It has been constantly remarked by the courts that sentences imposed on the defendants must serve the purpose of deterrence, restitution and rehabilitation. *Til v R*<sup>1</sup> has adopted this position when the court of~~

<sup>1</sup> [2017] SBCA 6

appeal remarked that *sentences should be crafted in such a way that will attain the goals of punishment, deterrence and rehabilitation.*<sup>2</sup> I adopt what the court in *Veen v The Queen*<sup>2</sup> remarked regarding the principles of sentence as follows:

*“sentencing is not a purely logical exercise, and the troublesome nature of the sentencing discretion arises in large measure from unavoidable difficulty in giving weight to each of the purposes of punishment. The purposes of criminal punishment are various: protection of society, deterrence of the offender and of others who might be tempted to offend, retribution and reform. The purposes overlap and none of them can be considered in isolation from the others when determining what is an appropriate sentence in a particular case. They are guideposts to the appropriate sentence but sometimes they point in different directions.”*

13) This court will consider the principles in determining the appropriate sentence in this current case. However, each case must be decided on its own unique set of facts when deciding the appropriate sentence. The reliance on past cases can be of significant assistance so that consistency and soundness in decisions are achieved. Past cases can only be used as a guide and sometimes can be of little value, as resonated in *Sahu v Regina*<sup>3</sup> as follows:

*“It is well accepted that the technique of comparing sentences imposed in different cases is of limited assistance and provides only imperfect guidance as to the appropriate sentence in any given case.”*

14) The sentence this court will impose on each defendant must deter them from committing further offending in the future. It should teach them a lesson that the courts will not tolerate those who break into stores or any building for that matter. It should also deter other potential offenders from offending.

15) It is important that this court also imposes a sentence that deters the defendants from repeating the same mistake in the future and prevent them from further offending. It must also serve as a warning to other likeminded persons who are tempted to offend in similar nature. Business owners such as the victim have been struggling to ensure their businesses flourish yet have also been victimised by the defendants and those who do not even care to work for their hard-earned money.

16) The sentence must also ensure that it fulfils the principle of *rehabilitation*, as such the defendants must be fully rehabilitated before they are reintegrated into their respective communities. They are young men and cannot resort to such reckless lives if they want to have a good future. They should now learn from their mistake and really think about how the consequences will affect their future.

<sup>2</sup> (No 2) (1988) 164 CLR 465

<sup>3</sup> [2012] SBHC 122

- 17) The prevalence in housebreaking including store breaking is on the rise in most communities today. There is lack of respect for innocent members in the communities including hardworking and struggling business owners like the victim. Our communities are not safe with the rise in these kinds of offending, and because of that, this court will not be lenient and must punish those who are found guilty of committing this offence. It therefore in the interest of the public that the defendants are punished for their unlawful actions. In doing so I echo what the court in *R v Zoni* expressed:

*"The attitude of breaking into other people's building for the sake of stealing in my view only show people who are lazy and only benefit through unlawful means from other people's efforts and sweat. Further, it has no place in our modern Solomon Islands societies either in the rural or urban area. Time and time again, this type of offending only brings bad image to our country because of only few individuals like in your case with no care attitude. The Court as the institution which the people of this country put their faith and trust on must stand up right against such offending and must deter accordingly those who indulge in this type of serious offending."*

### Tariff and Discussion

- 18) I have considered the cases cited by Counsels and I am grateful to them for providing copies to the court.
- 19) The case of *Regina v Anika*<sup>4</sup> highlights the courts stance on cases involving housebreaking or store breaking, that a custodial sentence must be imposed. The respondents in *Anika* were jointly charged for committing the offence of *Store breaking* contrary to section 300(a) of the Penal Code and were sentenced to 2 years imprisonment which was suspended for 2 years. The High Court upon reviewing the case, held that the sentence imposed by the lower court was inadequate and very lenient. The sentence was quashed, and the court imposed a custodial sentence. 2 years starting point was imposed and 18 months was added to reflect the aggravating features present including the use of weapon. 6 months was further deducted for the mitigating features. They were both sentenced to 3 years imprisonment.
- 20) The defendant in *R v Zoni*<sup>5</sup> stole a substantial amount of money totalling to \$22,243.80 and other valuable items. He set out at night with his co-defendant and cut the roof of the building using a snip sky blue cutter which was indeed a carefully planned and well-thought out manner to execute the offending. The court considered the aggravating features including the way the entry was executed. He entered the warehouse through the opening that they had cut on the roof with the support of the co-defendant. He pleaded guilty to the offence and the court imposed a starting point of 2 years, after considering the mitigating factors the court sentenced him to 14 months imprisonment.

<sup>4</sup> [2008] SBHC 91

<sup>5</sup> [2016] SBMC 10

- 21) The juvenile defendant in *R v Bona*<sup>6</sup> broke into a shop in the night with other persons. They cut the copper of the building using an implement and collectively removed goods worth \$4,090.00 and \$200 cash. The stolen properties were not retrieved which was an aggravating feature with others that the court considered when sentencing the juvenile. He was sentenced to 10 months imprisonment.
- 22) A starting point of 8 months imprisonment was imposed on *R v Zekele*<sup>7</sup>. The court took into account mitigating factors and aggravating factors before sentencing the defendant to 3 months imprisonment for *Housebreaking and committing felony*. He tore the window screen of the main door to the victim's house and removed few louvre glasses. He opened the door from inside by pushing his hand through a small hole he had created. He went into the canteen, broke the padlock of a packing case and stole SB\$2,000 from a handbag in the packing case. He left the building through the main door.
- 23) The defendants in the cases referred to are young persons like the defendants in the current case. They have also entered a plea of guilty to the offence in section 300(a) of the *Penal Code* and have similar aggravating features except for being armed when committing the offence. I must bear in mind that the youthfulness of the defendants is not an excuse for the wrongdoing. I adopt what the court then in *Paroke v Reginar*<sup>8</sup> expressed:
- "I do not accept the suggestion that because an offender is young and a first offender, he should not be sent to prison. In cases of serious crimes, and housebreaking is such a crime, the courts must reflect the seriousness of crimes in the sentences they pass even upon a young first offender."*
- 24) I am of the view that a starting point of 12 months' imprisonment is appropriate in the present case. The law is well settled in this jurisdiction with regards to guilty pleas. I therefore take into account the defendants' early guilty plea. They are both entitled to a third discount which is four months from the starting point. The resulting sentence is eight months' imprisonment. I make further allowance for being first-time offenders and their youthfulness, thereby reducing four months from the balance resulting in four months' imprisonment.
- 25) The stolen items were never recovered causing a serious loss to the victim's financial status. This coupled with the other aggravating features of pre-planning, committing the offence in a group and at night, causing financial loss to the victim, most importantly the prevalence in this kind of offending, I therefore increase two months to the starting point. The resulting sentence is **six months imprisonment**.

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<sup>6</sup> [2017] SBMC 6

<sup>7</sup> [2019] SBMC 6

<sup>8</sup> [1992] SBHC 9

**Orders:**

1. The two defendants, Mr Junior Gasa and Mr Ricky Alister are hereby convicted on one count of *Housebreaking and committing felony* contrary to section 300(a) of the *Penal Code, Cap 26* read with section 21(c) of the *Penal Code*.
2. Both defendants are sentenced to six months' imprisonment. I note that they have been on bail. Therefore, I order that the sentence starts today.
3. Right of appeal applies to any aggrieved party within 14 days from today.
4. Order Accordingly.

Dated 5 September 2023

