

IN THE CENTRAL DISTRICT MAGISTRATES' COURT OF SOLOMON ISLANDS.



Criminal Jurisdiction

Criminal Case No: 217 of 2024

Date of sentence: July 12, 2024

Counsel: For the Prosecution: Irene Mae Bosokuru.
For the Defendant: Eddie Gaza.

BETWEEN: REX Complainant
AND: LUCIANO JUNIOR KEY Accused

SENTENCE

Background:

The accused, Luciano Junior Key had pleaded guilty to one count of House breaking with intent to commit a felony, contrary to section 301 of the Penal Code.

This offence carries a maximum penalty of seven years imprisonment.

The facts:

The facts agreed are as follows:

The defendant is Mr Junior Luciano Key from Maoni village, Atoifi, East Kwaio, Malaita Province.

He is a 16-year-old Juvenile offender.

Malachi Pongi is part Gilbert and Temotu Province. He is the Complainant.

On February 7, 2024, around 4 am, the Complainant, Malachi Pongi was at his home in the Oxfam area of West Honiara.

At that time, he was lying on his bed and busy scrolling up and down on his phone. While he was there, he did not notice that there were two boys coming into his house.

The door of the house was shut at the time with a lavalava. The Defendant and another boy who is still at large entered into the Complainant's house.

The Complainant's brother-in-law, Anthony Fa'arodo saw the two boys went inside the house.

The Complainant and his brother-in-law apprehended the Accused outside the Complainant's house, another boy who was present inside the house escaped from the scene.

The apprehended accused was arrested and the matter was reported to White River Police.

On February 7, 2024, the accused participated in a Record of Interview with the police and admitted that he and his friend who is yet to be arrested went to the Complainant's house to take phones.

Aggravating factors:

Time of the Incident: Committing a crime during night hours, like 4 am, can be seen as more serious due to the increased likelihood of occupants being at home and asleep, thereby increasing the potential for harm or fear. The facts disclosed that the incident occurred at 4 am and the house was occupied at that time.

Planning or Premeditation: The circumstances in which the offending occurred indicates that the break-in was planned or premeditated rather than spontaneous.

These factors, collectively aggravate the offending.

Mitigating factors:

The following mitigating factors also influence the sentence to be imposed in the present case.

First, the Defendant had entered an early guilty plea to the charge. This, indicates that the Defendant is remorseful for his action and is willing to accept the consequences of his action. The plea has saved everyone's time and resources without going to trial.

Second, the Defendant is a first-time offender. Although he ran foul with the law only sixteen years into his life, the Court must afford him credit for observing the law for the past sixteen years.

Third, he is a young offender. He was 16 years old when he committed the offence. Thus, it is imperative on this court to consider the legislative provisions of the Juvenile Offenders Act.

Legislative guide to dealing with juveniles:

Section 12 of the **Juvenile Offenders Act** provides;

"No young person shall be sentenced to imprisonment if he can be suitably dealt with in any other way specified in Section 16."

Section 16 provides:

"Where a child or young person charged with any offence is tried by any court, and the court is satisfied of his guilt the court shall take into consideration the manner in which, under the provisions of this or any other Act or law enabling the court to deal with the case, the case should be dealt with, and, subject to such provisions, may deal with the case in any of the following manners or combination thereof, namely—

(a) by dismissing the case; or

- (b) by discharging the offender on his entering into a recognisance, with or without sureties; or
- (c) by dealing with the offender under the provisions of the [Probation of Offenders Act](#); or
- (d) by committing the offender to the care of a relative or other fit person; or
- (e) by ordering the offender to pay a fine, damages or costs; or
- (f) by ordering the parent or guardian of the offender to pay a fine, damages or costs; or
- (g) by ordering the parent or guardian of the offender to give security for his good behaviour; or
- (h) by directing that he be released on his entering into a bond to appear and receive sentence when called upon; or
- (i) by committing the offender to custody in a place of detention; or
- (j) where the offender is a young person, by sentencing him to imprisonment; or
- (k) by dealing with the case in any other manner in which it may be legally dealt with:

Provided that nothing in this section shall be construed as authorising the court to deal with any case in any manner in which it could not deal with the case apart from this section."

In **Mala v R** [2021] SBHC 131; HCSI-CRC 155 of 2021 (26 October 2021), Justice Bird observed the status of juveniles in the Criminal Justice System of this Country and echoed the need for courts to observe the provisions of the Juvenile Offenders Act. She said;

"Juveniles are treated differently in our criminal justice system and that is why there is a separate and distinct law that deals with cases by juveniles. In sentencing of juvenile offenders the whole provisions of the Act must be observed and taken into account by the courts."

This Court couldn't agree more.

The Court had enquired with the defendant, through his Lawyer, whether he is capable of paying a fine not exceeding \$300.00 if the Court decides to impose a fine pursuant to subsection (e) of Section 16 above. The Court was informed that the defendant could not afford to pay as he is only residing with his uncle.

The Court will have to consider other sentencing options. The Court will have to consider other manner of sentencing.

Comparative cases:

It is important to consult past cases when sentencing juvenile offenders to understand how courts have approached similar situations. In *Mala v R* [2021] SBHC 131; HCSI-CRC 155 of 2021 (26 October 2021), the appellant appealed against sentence imposed by the Magistrates Court. The appellant was sentenced to 1 ½ years imprisonment for the offence of housebreaking and committing felony contrary to section 300 (a) of the Penal Code (cap 26). The maximum penalty for that offence is 14 years imprisonment. He complained that the sentence was manifestly excessive. He was 17 years old. Having heard arguments and taking into account the cases relied upon by counsel, Justice Bird was of the view that the sentence imposed by the learned Principal Magistrate was manifestly excessive and imposed an alternative sentence of 6 months imprisonment and a good behaviour bond of \$100.00 for a period of 12 months. She was also of the view that the learned Principal Magistrate had erred in not particularly turning her mind to the provisions of section 12 (2) and section 16 of **the Juvenile Offenders Act**.

Sentence orders:

Having considered the facts of the case, the aggravating factors, the personal circumstances of the defendant, the mitigating factors present and the appropriate sentencing principle which is, rehabilitation, I am of the view that the appropriate sentence is six months imprisonment.

Sending the defendant to serve the term in prison would be repugnant to the objective of the Juvenile Offenders Act. I therefore, order that the term of six months imprisonment is fully suspended for two years on good behaviour bond of \$400.00.

The Surety, David Oeta, who is the uncle of the defendant must ensure that the Defendant comply with the good behaviour condition. In the event of breach within the period of suspension, the surety must surrender to the Court the financial bond of \$400.00.

The Court imposes the obligation to pay the monetary bond on the uncle in the event of a breach of the good behaviour condition for several reasons:

First, the monetary bond ensures that there is a financial stake for the uncle in ensuring the defendant adheres to the condition of good behaviour. The Court believes that the threat of financial loss can compel the uncle to take active steps in managing the defendant's behaviour.

Secondly, the Court believes that knowing that a financial penalty is at stake can motivate both the defendant and his uncle to take the condition of good behaviour more seriously and encourage compliance.

Thirdly, the payment of the bond in the event of breach will serve as a deterrent for future non-compliance by emphasizing the seriousness of the condition imposed.

Finally, by signing the bond, the uncle takes on a legal responsibility to ensure that the defendant adheres to the terms set by the court and must assist the defendant in his rehabilitation process.

The Court,



.....
Ricky Rongomea

DCM

