

IN THE CENTRAL MAGISTRATES' COURT)
OF SOLOMON ISLANDS)

Criminal Case No. 285 of 2024

Held at Honiara)

Criminal Jurisdiction

BETWEEN:

REX

v.

AND: ROBERT BODU



Date of Sentencing Hearing: 19 July 2024

Date of Sentence: 9 August 2024

Prosecutions: *Mr Abel Maelanga* (Police Prosecutions)

Defence: *Mr Vincent Junior Nomae* (Public Solicitors office)

SENTENCE

Introduction

1. The accused, Mr Robert Bodu is charged with the following offences:
 - a. Count 1 - Careless and Inconsiderate driving, pursuant to section 40 (1) of the Road Transport Act, Cap 131,
 - b. Count 2- Presence of alcohol in person's blood, pursuant to section 43A (1) of the Road Transport Act Cap 131 (as amended by the Police and Transport Legislation (Amendment) Alcohol Testing) Act 2016
 - c. Count 3 - Vehicles to be licensed, pursuant to section 7 (1) of the Road Transport Act Cap 131.
 - d. Count 4 - Driving a Motor Vehicle without a driver's license, pursuant to section 20 (1) of the Road Transport Act, Cap 131.
2. On the 19th of July 2024, the charge was put to the accused, he pleaded guilty to all the counts, and I enter conviction against him.
3. The sentencing and mitigation stage have already been completed and today I will be handing down the sentence.

offence is a fine of five thousand penalty unit, or six months imprisonment, or both such fine and imprisonment.

- b. **Count 2** - Presence of alcohol in person's blood, pursuant to section 43 A (1) of the Road Transport Act Cap 131 (as amended by the Police and Transport Legislation (Amendment) Alcohol Testing) Act 2016. The maximum penalty is ten thousand penalty units, or twelve months imprisonment, or both to such fine and imprisonment.
- c. **Count 3** - Vehicles to be licensed, pursuant to section 7 (1) of the Road Transport Act Cap 131. The maximum penalty is five thousand penalty units, or six months imprisonment or both such fine and imprisonment.
- d. **Count 4** - Driving a Motor Vehicle without a driver's license, pursuant to section 20 (1) of the Road Transport Act. Cap 131. The maximum penalty is five thousand penalty unit, or six months imprisonment, or both such fine and imprisonment.

6. The maximum penalties indicates the legislators' intention to deter people from committing the offense. Certainly, it is well established in law that the maximum penalty is reserved for the most serious types of offenses. As highlighted by Sir Albert, R Palmer, CJ, at paragraph 19 of *Regina v Kemazeka*¹, the seriousness of an offence, is reflected through the maximum penalties imposed by the law. In his own words, the following were stated:

"The level of the seriousness of offences is reflected on a prima facie basis by what the law imposes as the maximum penalty. The more serious an offence the greater the maximum penalty imposed. For instance, the offence of murder is regarded as a very serious offence and so carries a penalty of mandatory life imprisonment on conviction."

Aggravating Features

7. Having perused the brief facts, these are the aggravating features that I find in your case;
- 1. The general seriousness of the offences as reflected through the Maximum Penalties.
 - 2. The prevalence of these offending. The Courts have seen an increased number of this type of offending coming before the courts and it is very concerning. The rise in traffic offenses reflects a troubling trend that demands immediate attention and action.

¹ 2008] SBHC 41; HCSI-CRC 467 of 2007 (3 September 2008)

² At paragraph 19 of Above n12

9. Your case can be distinguished from the case of Ogrady, because you are an ordinary citizen whereas the accused in Ogrady is a Police Officer. Although the facts did not state when you consumed alcohol, it did show a percentage of alcohol in your system, therefore your sentence will be less.

10. In case of *Regina v Alden*⁴, the accused pleaded guilty to three counts of traffic related offences, this includes Careless and inconsiderate driving, c/s 40 (1) of the Road Transport Act, Presence of alcohol in the accused's body and accused driving with invalid driver's licence. The facts reveal that the accused drove the vehicle and veered off the road and ended up ditching into the drain beside the road. The Police found that the accused was under the influence of alcohol and that his driving licence had expired. For the offence of Careless and inconsiderate driving, he was sentenced to a fine of \$1400 penalty unit in default 2 months imprisonment, for the count of Presence of alcohol in a person's blood, he was sentenced to \$2,900 penalty unit in default six months imprisonment, and for the offence of drivers to be licensed, he was sentenced to a fine of \$1500 penalty unit in default 2 months imprisonment. Total fine of SBD\$ 5800 due by 11/12/2020, in default 12 months imprisonment. Invoke section 29 (1) and (8) of Road transport Act for disqualification.

11. In ascertaining the tariff for the offence as charged, counsel referred to the case of *R v Ofasia*, the accused pleaded guilty to the following traffic offences, a count of vehicle to be licenced and one count of Presence of alcohol in a person's blood. The facts of the case were that, on 2nd May 2020, at approximately 11:13pm to 11:34pm, Michael Ofasia was driving a grey Bounty with registration number MC-0702 along Mendana Avenue Road in front of the Central Police Station. During this time, police were conducting a random breath test operation. Ofasia's vehicle was stopped, and a Breathalyzer test showed alcohol readings of 0.163% and 0.175%, both significantly above the legal limit of 0.05%. Additionally, the vehicle's license had expired on 29th February 2020. Ofasia was charged accordingly. He was sentenced as follows: Count 1 (Presence of Alcohol): Starting point of \$5,000, reduced by \$1,700 for early guilty plea and \$2,000 for other mitigating factors, resulting in a fine of \$1,300. Aggravating factors added \$2,000, bringing the total fine for this count to \$3,300. Count 2 (Driving Unlicensed Vehicle): Starting point of \$1,000, reduced by \$300 for early guilty plea and \$400 for other mitigating factors, resulting in a fine of \$300. Aggravating factors added \$800, making the total fine for this count \$1,100. Total Fine: \$4,400, to be paid by 31st August 2020.

⁴[2020] SBMC 41; Criminal case 884 of 2020

October 15, 2021, and failure to do so will result in 40 days imprisonment. Conviction is entered, and she retains the right to appeal within 14 days.

15. Having outlined the above cases that reveals the ranges of tariffs applied in Courts within this Jurisdiction, it is in my view that this case when compared to the above-cited cases falls within the mid-range of the seriousness spectrum.

Sentencing Tariff:

16. For the offence of Careless and Inconsiderate driving charge, the sentencing tariff ranges from bound over sentence to two thousand five hundred Penalty Unit or 5 months imprisonment. Depending on the circumstance of the offending and the level of culpability involved.

17. For the offence of Presence of alcohol in a person's blood, the sentencing tariff ranges from bound over sentence to 4000 penalty unit or 12 months imprisonment.

18. For the offence of Vehicles to be licensed, the sentencing tariff ranges from bound over to \$2,800 penalty unit or five months imprisonment.

19. For the charge of Driving without a valid driver's licenses, the sentencing tariff ranges from bound over sentence to three thousand five hundred penalty Unit or six months imprisonment.

Sentencing Principle:

20. In terms of sentencing, the cardinal principle is simple, that is, each case must be decided on its own unique set of facts. Past cases can only be used as a guide and sometimes can be of little value. In *Sahu v Regina*⁷ the Court stated:

"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." However, to ensure uniformity and coherence, past cases can be of significant assistance.

21. In relation to Careless driving, His Worship Aulanga made sentiments in *R v Rae and R Walter Kola*⁸, which I think it is also important to reiterate ie:

⁷ [2012] SBHC 122; HCSI-GRC 504 OF 2011

⁸ R v Walter Kola

Mitigating Factors

27. I take due account to the following factors as Mitigation in your case:

1. **Early Guilty Plea & Remorse** – The accused pleaded guilty at the first available opportunity. His guilty plea demonstrates remorse and has conserved the court's time and resources that would have been expended in conducting a full trial. This clearly shows that the accused has taken responsibility for his actions and accepts the consequences. As settled in *Qoloni v R*¹⁰, guilty pleas attract discounted sentences, I shall give full discount available in the case of that is 30 % discount.
2. **Counsel for the accused had submitted that the accused has a previous conviction**– This being his second encounter with the law.
3. **Respected person in his community.**

Personal Circumstance:

28. The personal circumstances in relation to the accused is discussed as follows:

- a. The accused is 59 years old.
 - b. He works as a driver for Lives and property security services.
 - c. His wife is a diabetic patient and has no formal education. She remains at home.
 - d. Three children attend formal education, due to lack of funds, his son remains at home.
2. Counsel for the accused has presented the argument that the defendant's commission of the offence was influenced by significant personal distress, including the loss of his son, stress related to one son leaving school, and his wife's diabetes. While I express my sympathy for the defendant's personal tragedies, I do not find the assertion that these factors directly caused the offences to be substantiated. It was incumbent upon the accused to seek assistance from appropriate counselling services to address these challenges, rather than resorting to criminal conduct.

¹⁰ [2005] SBHC 73

