

IN THE CENTRAL MAGISTRATES' COURT)
OF SOLOMON ISLANDS) Criminal Case No. 275 of 2024

Held at Honiara)

Criminal Jurisdiction

BETWEEN:

REX

v.

AND:

KEVIN TARIFIU

Date of Sentencing Hearing: 12 August 2024

Date of Sentence: 16 August 2024

Prosecutions: *Ms Florence Hiroshachi* (Police Prosecutions)

Defence: *Self – represented*

SENTENCE

Introduction

1. The accused, Mr Kevin Tarifu initially appeared before this Court on June 18, 2024, he was duly informed of his right to self-representation or to seek legal counsel. The Court provided a comprehensive explanation of the procedural aspects involved. When queried regarding his readiness to enter a plea, Mr. Tarifu exhibited signs of confusion and subsequently expressed a desire to obtain legal representation.
2. Accordingly, the Court has granted Mr. Tarifu a reasonable period to secure appropriate legal representation.
3. On August 12, 2024, Mr. Kevin Tarifu notified the Court of his decision to proceed with self-representation. He further indicated his readiness to enter a plea at this juncture. On the same day he pleaded guilty to one count of Presence of alcohol in person's blood, pursuant to section 43 A (1) (a) of the Road Transport Act Cap 131 (as amended by the Police and Transport Legislation (Amendment) Alcohol Testing) Act 2016.
4. I enter conviction on his guilty plea.

5. The sentencing and mitigation stage have already been completed and today I will be handing down the sentence.

Agreed Facts

6. The prosecution presented a summary of the agreed facts related to the case. The summary was read aloud in open court, and Mr. Kevin Tarifu, who was representing himself, acknowledged and agreed to the accuracy of the facts as outlined by the prosecution. I will adopt the agreed facts as follows:
 - a. On May 22, 2024, at approximately 20:50 hours, the accused, Mr. Kevin Tarifu, was operating a motor vehicle, specifically a grey Toyota Corolla with registration number MD-0941. At that time, Mr. Tarifu was driving along Mendana Avenue, proceeding in a westerly direction. The vehicle was subsequently parked at the Casino Bus Stop.
 - b. The vehicle driven by Mr. Kevin Tarifu was observed by traffic officers, who subsequently arrested him. He was escorted to the Central Police Station Watch House for further processing. Upon arrival at the Watch House, it was evident that Mr. Tarifu was visibly intoxicated, exhibiting signs of severe drunkenness, including notably sleepy eyes. An alcohol test was conducted as part of the processing.
 - c. At the Central Police Station Watch House, a preliminary breath test was administered to Mr. Tarifu, yielding a result of 0.192%, which exceeded the legally prescribed limit. Following this initial test, Mr. Tarifu was monitored for a ten-minute observation period before being authorized to undergo a formal breath analysis test.
 - d. Following the initial breath test, Mr. Tarifu provided a sample for a formal breath analysis test, which registered a result of 0.169%. This result remained above the legally prescribed alcohol concentration limit. Consequently, Mr. Tarifu was formally arrested for the offense of having alcohol present in his blood, as defined under Section 43A(1)(a) of the Road Transport Act Cap 131.
 - e. Observations at the Watch House revealed that Mr. Tarifu's face was pale, and his eyes appeared sleepy. Despite these signs of intoxication, he demonstrated a good level of understanding. The road conditions at the time were dry, and traffic was moderate. Mr. Tarifu cooperated fully with the authorities. Further police investigations confirmed that the vehicle's

license was valid until August 31, 2024, its insurance was valid until September 4, 2024, and Mr. Tarifu's driver's license was set to expire on August 10, 2024.

- f. Mr. Tarifu was formally charged with the offense of having alcohol present in his blood, pursuant to Section 43A(1)(a) of the Road Transport Act Cap 131.

Offence and Maximum Penalty

7. The Maximum Penalties for this offence can be found under the Road Transport Act Cap 131, the Police and Transport Legislation (amendment) Alcohol Testing 2016, and the Penalties Miscellaneous Act 2009. For the Purposes of sentencing I will outline the maximum penalty as follows:
 - a. 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.
8. 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 conviction²."

Aggravating Features

9. 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 Penalty.
 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

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

² At paragraph 19 of Above n12

rise in traffic offenses reflects a troubling trend that demands immediate attention and action.

3. Prosecution submits that the accused was under the influence of alcohol is a grave aggravating feature. This behaviour not only endangers the accused's own life but also poses a significant risk to the safety of other road users and pedestrians.
4. The offending occur at night time.

Case authorities

10. For reasons that the accused appeared in person I must set out the sentencing guidelines, case authorities, and sentencing tariffs to pitch the appropriate starting point.
11. In *Regina v Fanasia*³, the accused was sentenced to \$3000 penalty unit fine. He was charged with one count of Presence of alcohol in a person's blood, c/s 43 A(1)(a) of the Road Transport Act. The facts reveal that the accused On August 20, 2021, between 12:05 a.m. and 12:30 a.m., the Kukum operations team conducted a traffic check in front of the Kukum Traffic Centre on Ropi Street. During the check, Police Constable Kabi inspected a white Toyota Corolla, registration number T-0208, and confirmed that the vehicle's license was valid. The defendant was then given a breathalyser test, which initially recorded a blood alcohol concentration of 0.216 grams per 100 millilitres. After a ten-minute observation period, a subsequent breathalyser test showed a reading of 0.213 grams per 100 millilitres.
12. Your sentence will be less than the sentence imposed in the case of *Regina v Fanasia*⁴, because the alcohol concentration in your blood is less than the alcohol concentration found in Fanasia's case.
13. *Regina v Parsad*⁵, the accused pleaded guilty to one count of Presence of Alcohol in a person's blood, c/s 43 A (1) of the Road Transport Act (As amended by the Police and Transport Legislation (Amendment) alcohol Testing) Act. The facts revealed that the accused was returning to his residence at West Kola from the Golf Club when he was stopped by the police at the junction near his home. The incident occurred between 04:24 hours and 04:45 hours, prior to sunrise. Following his stop, he was taken to Kukum Police Station, where breathalyser tests were conducted. The final test results indicated a blood alcohol concentration of 0.167%. He was sentenced as follows: a starting point of \$4000

³ [2021] SBMC 13; Criminal Case 677 of 2021

⁴ As above

⁵ [2021] SBMC 5; Criminal case 240 of 2021

penalty unit was imposed, a deduction of 1,300 to reflect the mitigating factors, resulting in a fine of \$2,700, in default 6 months imprisonment. Further to that, S29(1) and 29 (8) of the RT Act was invoked for a period of 12 months.

14. Although the alcohol concentration in your blood was comparable to that found in the *Parsad*⁶ matter, your sentence is expected to be less severe. This consideration is based on the fact that you stopped your vehicle upon the police's approach. It is possible, though not confirmed, that you stopped because you recognized your impaired ability to drive.
15. In the case of *R v Furai*⁷, the accused pleaded guilty to one count of Presence of Alcohol in a person's blood, c/s 43 A (1) of the Road Transport Act (As amended by the Police and Transport Legislation (Amendment) alcohol Testing) Act 2016. On May 8, 2020, he was arrested in front of the Central Police Station on Mendana Avenue Road during a road check conducted by Kukum Traffic officers as part of the COVID-19 operations. During the stop, the officers conducted their routine checks and confirmed that his driving license, vehicle license, and third-party insurance were all valid. You were then subjected to an alcohol test, and based on the results of this test, he was subsequently charged with the offense in question. The Court imposed a starting point of \$5000, considering his early guilty plea the court deduct \$1700. The court further deduct \$1000 for the remaining mitigating factors, which brings the sentence to \$2300. The court then add \$1200 to reflect the aggravating features involved. A total sentence of \$3500 was imposed, in default 6 months imprisonment.
16. In case of *Regina v Alden*⁸, 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

⁶ [2021] SBMC 5; Criminal case 240 of 2021

⁷ [2020] SBMC 20; Criminal Case 537 of 2020

⁸ [2020] SBMC 41; Criminal case 884 of 2020

17. 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 ~~low~~^{mid}-range of the seriousness spectrum.

Sentencing Tariff:

18. 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.

Sentencing Principle:

19. 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*⁹ 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.

20. In *Cheffers v R*¹⁰ then CJ Ward, stated:

"Driving whilst under the influence of alcohol is extremely serious offence. Anyone who drives in such a state has deliberately done a course of action that puts his own and far more seriously, other people's lives at risk. However carefully he may attempt to drive, his reactions if confronted with an emergency will not be effective as when he has taken no alcohol."

21. In determining the appropriate sentence for the accused, the Court has carefully considered both specific and general deterrence. Specific deterrence aims to prevent the accused from engaging in similar criminal conduct in the future, ensuring that the individual understands the consequences of their actions and refrains from reoffending. General deterrence, on the other hand, serves to discourage others who might contemplate similar unlawful behaviour by demonstrating that violations of the law will result in significant repercussions. It is the Court's intention that the sentence imposed will not only address the individual's conduct but also send a clear message to the wider community that breaches of traffic laws, particularly those involving alcohol and vehicle safety, will not be tolerated.

⁹ [2012] SBHC 122; HCSI-CRC 504 OF 2011

¹⁰ Unrep. Criminal Case Number 11 of 1989

22. Hence, having assessed the entirety of this matter, including the mitigating and aggravating factors, and the need for both specific and general deterrence, retribution, and the public interest, I am of the view that the most appropriate sentence I should impose on the accused is one of fine.

Starting Point:

23. Having meticulously reviewed the aggravating factors pertinent to this case, and after giving due consideration to the sentencing tariffs established in the cases cited, I find it appropriate to set the starting point for Presence of alcohol in a person's blood at a penalty Unit of - \$2,500.00.

Mitigating Factors

24. 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*¹¹, guilty pleas attract discounted sentences, I shall give full discount available in the case of that is 30 % discount.
2. Cooperated well with Police.

Personal Circumstance:

25. The personal circumstances in relation to the accused is discussed as follows:
- a. The accused is 31 years old. Lives at Laundry Valley, White River, West Honiara.
 - b. Accused is not married. However, currently takes care of his Uncle's children.
 - c. He works as a bus driver for another person, who usually pays him fortnightly around \$1300.
 - d. First time offender.

Sentencing Consideration:

26. The Court takes judicial notice that driving under the influence of alcohol is a leading cause of road traffic accidents. It is a matter of common knowledge that


¹¹ [2005] SBHC 73

such behavior significantly impairs a driver's ability to operate a vehicle safely, thereby increasing the risk of accidents. Tragically, many lives have been lost and numerous individuals have been severely affected due to the actions of drivers who operate their vehicles while intoxicated. This understanding underscores the importance of enforcing stringent measures against impaired driving to safeguard public safety and prevent such tragic outcomes.

27. In determining the appropriate sentence, I have established a starting point of \$2,500 penalty units, taking into account the aggravating features of your case. From this amount, I have deducted \$750 in recognition of your early guilty plea. Additionally, I have further reduced the penalty by \$550 to account for your personal circumstances and other mitigating factors pertinent to this case. A total sentence of \$1200 penalty unit is imposed.
28. The Court has considered that under sections 29(1) and 34(1) of the Road Transport Act, the decision to disqualify an accused's license is discretionary. In light of your personal circumstances, I will not invoke Section 29(1) of the Road Transport Act.

Sentencing Order:

1. I hereby sentence you Mr Kevin Tarifu to a total fine of \$1,200.00 penalty unit.
2. The fine must be paid to this court by 16th October 2024.
3. In default of the above payment – 4 months imprisonment.
4. 14 days right of appeal applies.
5. Order Accordingly.

THE COURT


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Dalcy Belapitu Oligari
Principal Magistrate