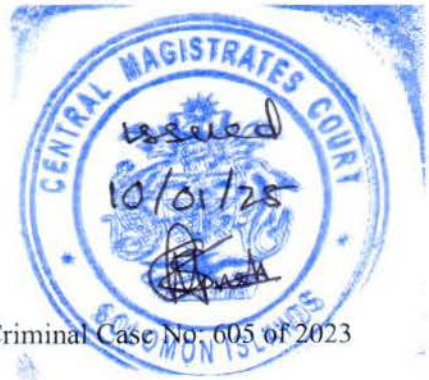

IN THE CENTRAL MAGISTRATES COURT

IN THE SOLOMON ISLANDS

Criminal Case No. 605 of 2023

In the Criminal Jurisdiction

BETWEEN: **REX**

V

AND: **MADDLYN HAMARA**

Crown: Ms Martha Mutukera

Defence: Ms Rochelle Palmer

Date of sentencing submissions: 16th of December 2024

Date of sentence: 23rd of December 2024

SENTENCE

Back-ground

1. The Defendant in this matter, is none other but yourself, Ms Maddlyn Hamara, you are charged with 2 counts of Larceny by Clerk, both of which, are in contrary to section 273 (a) (i) of the Penal Code.
2. The Complainant in this matter is Mr Ronald Ogrady, the General Manager of Coral Sea Casino
3. You are a native of Luaniua, Ontong Java, Malaita Outer Islands. At the material time, you were employed at the Coral Sea Casino as a Casino Dealer
4. On the 26th of January 2024, you entered a not guilty plea for count 1, and a guilty plea for count 2.
5. On the 11th of March 2024, the court made directions, whereby a trial was fixed to commence on the 29th of July 2024 to the 2nd of August 2024, the trial is in relation to the count you pleaded not

guilty to. The interim mention dates were the, 15th of April 2024, 13th of May 2024, 10th of June 2024, 8th of July 2024, and the final interim mention was on the 22nd of July 2024. You were excused from appearing in court, on the dates commencing on the 15th of April 2024 to the 8th of July 2024.

6. A warrant of arrest was issued on the 22nd of July 2024, the final interim mention date, where you were required to appear, but failed to do so.
7. Since the 22nd of July 2024, the responsible Police officers failed to execute your warrant of arrest. I summoned one of the investigators to explain the delay on the 11th of October 2024, and found that if they were to continue relying on the very low level of intel they were acting upon, chances of executing the warrant of arrest would be from slim to none.
8. On the 15th of November 2024, the warrant of arrest was finally executed and you where remanded in custody. On the 2nd of December 2024, you changed your plea in count 1 to a plea of guilt.

Facts

9. The offending's at hand arose from two separate incidents. The first incident occurred on the 15th of July 2023 and the second incident was on the 19th of July 2023.
10. On the 15th of July 2023, you were said to have called someone by the name of Samuel Koso via mobile phone and you later went and met with him opposite the shops located at Town-Ground. Upon meeting Mr Koso, you gave 10 gold casino gaming chips to him.
11. These gaming chips are valued at SBD $10,000.00 since one chip is worth SBD $1,000.00.
12. Koso went and changed the chips at the Coral Sea Casino and later met you at the Hot Bread Kitchen located at the Town-Ground. Koso gave you SBD $10,000.00 and you were said to have given him $100.00.
13. The second incident occurred on the 19th of July 2023 around 5 pm, when you were on a shift duty, and was dealing on table MBD-01 at the Coral Sea Casino. At around 5:57 pm, you grabbed 4 gaming chips, that were yellow in colour, each of which was valued at SBD $1,000.00, and placed all 4 in the pocket of your skirt.
14. Little did you know, that the surveillance camera captured your actions. The General Manager was informed, and was also shown the surveillance footage, which confirmed your actions to have been committed at 5:57 pm, on the 19th of July 2023.
15. You were searched and later admitted to what you did. You were then referred to the Police, and terminated from your employment on the next day, being the 20th of July 2023.

Conviction/Acquit

16. With the guilty pleas recorded and the set of agreed facts tendered, I hereby enter conviction against you.

Maximum penalty

17. The maximum penalty for any offence under section 273 of the Penal Code, is 14 years imprisonment. The relevant proviso under this section provides as follows:
273. Any person who[1] -

(a) being a clerk or servant or person employed in the clerks or servant's capacity of a clerk or servant-

[1] Section 273 of the Penal Code.

(i) *steals any chattel, money or valuable security belonging to or in the possession of his master or employer*

is guilty of a felony, and shall be liable to imprisonment for fourteen years.

18. The High Court, in the case of **Regina v Kemakeza**, highlights, that 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[2].
19. Maximum penalties in my view, are put in place to balance the principles of justice and fairness and the need to protect societal norms. At the same time, they also provide strong warnings about the significance and importance of the laws they enforce.

Matters of Aggravation

20. I note the following as aggravating in nature:
    (i) **Breach of trust**- You were so fortunate to have been employed, a privilege that most Solomon Islanders your age, do not have. Your previous employers saw that you were someone they could trust, hence their decision in employing you. Instead of being grateful, you went around and betrayed the trust placed on you.
    (ii) **Financial loss**- there is no doubt that your actions on the 15th of July 2023, has costed your employers, the amount of SBD $10,000.00. Facts show, that this amount was never retrieved. This was money that could have gone towards operational expenses.
    (iii) **The offending in itself**- The manner in which you took the gaming chips is no different from the actions of a thief and an embezzler. Clearly, your actions were precise and purposive.
    (iv) **Level of culpability**- The facts tendered before me, shows, that you are the strategist behind both offending's, which places the seriousness of your actions above the mid-range of the seriousness involved.

Matters of mitigation

21. I find the following factors as mitigating in nature:
    (i) **Guilty plea**- you entered a guilty plea for count 2, and a not guilty plea for count 1. In terms of count 1, time was wasted, since a warrant of arrest was issued for your non-appearance since the 22nd of July 2024 and was only executed on the 15th of November 2024. Following your arrest, your plea of not guilty, was changed to that of guilty. I hold the view, that the time wasted should be jointly blamed on you and the investigators tasked to work on this matter. Their inactions have resulted in the time and resources wasted.
    (ii) **Remorse**- I am told that you are deeply remorseful for your actions. The guilty pleas now entered, should be taken to reflect how sorry you are.
    (iii) **No previous convictions**- I am told that you are a first-time offender, with no previous convictions.
    (iv) **Time spent in custody**- I will give credit to the period of time you have already spent in custody.

Case Authorities

[2] [2008] SBHC 41; HCSI-CRC 467 of 2007 (3 September 2008)

22. Counsels have taken the effort to provide me with cases they believe would assist in reaching a fair and proportionate sentence. I am grateful for the courtesy shown.

Comparative sentencing

23. In terms of comparative sentencing, previous courts have advocated on both the need to ensure consistency in imposing sentences, and the need for cases to be dealt with upon assessment of their own set of facts and circumstances.
24. In **Joel Likilua & Allen Kokolobu v R [1988 – 89] SILR 148** Ward CJ commented at page 149: *Sentencing is not a process that follows exact mathematical rules. Circumstances and people vary and it is undesirable to consider such comparisons as more than a very imprecise guide*[3].
25. In **Sau v R [1982] SILR 65** Daly CJ commented at page 69:
'I must add one further observation on the sentencing process and on appeals against sentence. There is an increasing practice of reference being made to specific previous cases in court. This was done by the learned magistrate in this case and the dissimilarities give counsel a ready – made ground for argument which they understandably take. Sentencing is not an exact mathematical process; if it were it could be done by a computer. The human element both in the person before the court and the sentencer remain a vital part of the process. Previous sentences demonstrate principles or parameters of sentence; but they should not be used as binding precedents to reach a sentence in a particular case. All the judiciary have access to each other's sentences and we must rely upon the good sense and experience of the judiciary to reach sentences which reflect not only their own views but also the views of the community[4].
26. **In R v Ben Tugale, Brown Beu, Nelson Oma, James Sala, Loius Lipa, Charles Meaio & John Teti (Unrep. Criminal Case No. 12 of 1997)** Lungole – Awich J commented at page 21:
Punishment in one case usually cannot be matched exactly with punishment in another. Circumstances usually differ even if only in details. Public view about how serious an offence is regarded also changes. Prevalence or otherwise of an offence during particular period also counts[5].

Sentencing remarks

27. The manner in which you acted on the 15th of July 2023 and the 19th of July 2023 reflects how you systematically abused your position of trust, being a casino dealer for Coral Sea Casino.
28. As a casino dealer, you were a cornerstone of the casino's operation, which requires a combination of trust, integrity, and professionalism.
29. Your actions during the material time, have not only undermined your role as a dealer, but also the reputation and operational success of the entire company.
30. Ms Palmer has explained that you were promised by the member of Parliament for West Honiara, that he will assist you with money for your child's school fee, but has failed to live up to his promise. It was due to the hardship faced financially, that you resorted to stealing.
31. Ms Hamara, in life, there is and will never be a short cut. We are all prone to hardships of all sorts.
32. I am told, you only earn $300 weekly from your work as a casino dealer. In my view, this is better than nothing. There are many out there who try to make ends meet with money even smaller than the amount of $300.

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[3] [1988 – 89] SILR 148
[4] [1982] SILR 65
[5] (Unrep. Criminal Case No. 12 of 1997)

33. I also believe, that a majority of the dealers at Coral Sea Casino, are also paid the same amount as you, but they do not want to risk doing what you did.
34. While, the chips stolen during the second incident were retrieved, it does not take away the fact, that you orchestrated the idea to steal these casino gaming chips on both occasions. Your actions reflect your desire to have more than you are entitled to, your desire for personal gain without taking into account the well-being of your former colleagues. Moreover, your actions also reflect how arrogant you are and your refusal to consider the impact it might have on others, specifically your colleagues.
35. Your actions are highly condemned. You must now face the consequence of your wrongdoings.
36. I will also consider the remarks by Ward, CJ, as he was then, in the case of **Fiuadi v R**, where he states, that when any offence of dishonesty is committed by someone holding a position of trust, it then makes the offence more serious[6]. His Lordship further adds, that the most appropriate sentence for and offence involving breach of trust, is that of a custodial sentence[7].
37. At this juncture, I wish to cite the remarks made in the English case of **R v Ball (1951) 35 CrAppR 164 where**, Hilbery J, in his judgment of the Court of Criminal Appeal, commented at pages 165 - 166:

    "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 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 living (emphasis mine)[8].
38. It is the utmost wish of this court, that the sentence I will impose on you this morning, will not only be seen as addressing a breach to the section 273 (a) (i) of the Penal Code, but one that assists you in acknowledging the need to turn away from such selfish and lazy means of gaining material possession.
39. The existing sentencing principles are fully considered in this sentence, whereby it reflects the need for both specific and general deterrence, rehabilitation, prevention and retribution
40. Having said this, I am of the view, that the circumstances presented warrants a range between 24 to 36 months to be considered for count 1. I therefore pitch my starting point at 28 months, I deduct a 1/3 of the starting point, bringing us to 19, I minus 1 months for the time already spent in custody, and further deduct 4 months for the remaining mitigating factors. We are therefore left with 14 months. I add a total of 10 months to reflect the aggravating factors, therefore reaching 24 months.
41. As for count 2, I will also consider a range between 24 to 36 months. I therefore pitch my starting point at 28 months, I deduct a 1/3 of the starting point, bringing us to 19, I minus 1 months for the time already spent in custody, and further deduct 4 months for the remaining mitigating factors. We are therefore left with 14 months. I add a total of 8 months to reflect the aggravating factors, therefore reaching 22 months.
42. Note different figures added for the aggravating factors for each of the counts. The difference is influenced by the fact that the items stolen in count 2, were retrieved.

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[6] [1989] SBHC 17; [1988-1989] SILR 150 (12 December 1989)

[7] Above n 6.

[8] (1951) 35 CrAppR 164

43. It is with this that I now sentence you as follows:

ORDERS:

(i) Count 1- I sentence you to 24 months imprisonment.
(ii) Count 2- I sentence you to 22 months imprisonment
(iii) The custodial term for count 1 is to be served concurrently with the custodial term in count 2.
(iv) Right of appeal applies within 21 days.

Dated this 23rd day of December 2024.

THE COURT

Emily Z Vagibule Pakoa (Mrs)

Principal Magistrate