REGINA .V. PATRICK IRO AND JAMES TATAU
REGINA .V. PATRICK IRO

High Court of Solomon Islands
(Palmer C)

Criminal Case Number: 357-04 and 337-03

Date of Hearing: **21 October 2005**
Date of Sentence: **25 October 2005**

M. McColm for the Crown
Ms. Swift for Patrick Iro
C. Ashley for James Tatau

Palmer CJ.: There are two separate matters Regina v. Patrick Iro and James Tatau CRC 357-04 ("**the first Case**") and Regina v. Patrick Iro CRC 337-03 ("**the second Case**") before me for sentence today but which involved the defendant Patrick Iro in both.

In the first case, the defendants had been initially charged with four counts. Those offences related to the same incident which occurred on or about 10 August 2000 when a group of men about 4-5, members of the Malaita Eagles Force, some dressed in military type clothing, went to the premises of Kitchener and Leah Collinson ("the Complainants") and demanded to take their vehicle. It appeared some of them had been drinking. When they were told that the vehicle was not there, they threatened to do them harm unless told where they had kept it. One of the men in their hilux had a gun (not the defendants). They wanted to search their property and threatened harm to the Complainants. As a result of the threats they told them that the car was with Nelson Ne'e ("Ne'e") a friend. The same group of men then went to Ne'e and demanded that the vehicle be given to them. They told him that they had permission from the Complainants. This was not true. Ne'e gave them the keys on that basis. The vehicle was recovered in 2003. It had been re-sprayed and needed repairs to be done to it.

Counts 1 and 3 related to charges of armed robbery contrary to section 293(1)(a) of the Penal Code. The defendants pleaded not guilty and the charges dropped. They were accordingly acquitted of those charges. Counts 2 and 3 related to charges of demanding with menaces and larceny contrary to sections 295 and 261 of the Penal Code. Both defendants pleaded guilty to those charges.

The second Case related to two counts of robbery contrary to section 293(1)(a) of the Penal Code and one count of unlawful wounding contrary to section 228 of the Penal Code. He pleaded not guilty to one count of robbery (count 1) and the third count of unlawful wounding. The learned Prosecutor informed the court that a nolle prosequi was to be entered for those charges and the defendant accordingly discharged.

The facts as presented before the court related to the taking of a toyota hilux truck on the 18 January 2001 when the complainant Naoyuki Fujiyama was forced to stop opposite the Telekom Office at Ranadi by the defendant, Patrick Iro. There was another person in the vehicle with the defendant at that time. Upon stopping, the defendant jumped out of his vehicle and rushed to the complainant's driver's side and started to argue and to physically struggle with the complainant. During this struggle the defendant told the complainant to give him the key. The complainant's four year old son was crying at that time. The keys were forcefully taken from the complainant and he got out the vehicle with his four year old son. The defendant got back into the truck and drove off in the direction of the airport. The complainant saw the doctor on 20 January 2001 but no treatment was required. The injury eventually healed and no sutures were required. The vehicle was the property of the Japan International Cooperation Agency. It was valued at $150,000.00. It was only returned one week before RAMSI arrived in the Solomon Islands.

Mitigation:

Patrick Iro. In mitigation learned Counsel Ms. Swift for the defendant relied on the guilty pleas entered. She also referred to the assistance provided by the defendant to Police in another major murder case due to be commenced for hearing at the end of January 2006. She pointed out that the defendant did not receive any benefit for this. He offered to assist police on his own free volition and to turn against his own former colleagues. Learned Counsel submits this is consistent with his change of mind and intentions to make reparations. As the trial for that case draws near, the danger or risk to his own personal safety increases. He acknowledge his past actions and that he took sides during the tension. Learned Counsel also pointed out that the defendant had been in custody since 19 September 2003 but that he was also in custody for 28 days immediately after he was arrested for the robbery charge on 1 March 2001. He had a string of offences going back to 1987 or minor assault and a string of larceny offences. In 1988 he served a 12 months prison sentence for simple larceny. In 1989 he was sentenced to imprisonment for a total of 4 years and six months for rioting and going armed in public. Since his release he had also been convicted of affray in 1993 and bound over for six months and for a consuming liquor offence in 1995.

It was submitted on his behalf that the offences for which he had been charged with in this instance are more on the lower end of seriousness. The court was also asked to consider principles of totality in sentencing. A number of comparative cases were also referred to for the court's consideration.

James Tatau.

Learned Counsel Mr. Ashley also referred to the guilty plea entered in his case and asked the court to take that into account as to the appropriate sentence to be imposed. Mr. Ashely pointed out that the defendant had been in custody since 11 January 2005 for other very serious offences. He is married and has 3 children. Mr. Ashley quite properly acknowledged the extensive submissions made by Ms. Swift in support of her client and kept his submissions as brief as possible very sensibly acknowledging that any sentence to be imposed would not be very much different from each other as they both played a similar part in the commission of the offence.

Comparative cases.

In **Daniel Fa'afunua v. Regina**[1], the appellant, Mr. Fa'afunua appealed against the sentence of 3 years imposed for demanding money with menaces contrary to section 295 of the Penal Code. The appellant argued inter alia that the sentence imposed was manifestly excessive in the circumstances. The court rejected that submission and dismissed appeal. There were clear aggravating facts in that case, which involved a group of men, who were armed and used threats. The victim was the owner of the local publishing company, the Solomon Star who only paid out the money demanded because he feared for his life. The appellant had entered a not guilty plea in that case.

In another similar case, dealt with by the Magistrates Court **Regina v. Jimmy Ahi**[2], the defendant was a prison officer who demanded a vehicle at gun point from the victims. He kept the vehicle for some 8 months. This involved a guilty plea and the defendant a man of previous good character. He was sentenced to 2 ½ years imprisonment.

The third case referred to was the Sol-Law robbery case, Regina v. Chris Mae and Moses Su'u[3]. Both also entered guilty pleas to the removal of two motor vehicles from the premises of Sol-Law. It was a concerted effort to steal the vehicles involving a group of men and being armed and with clear threats of violence and death being issued. At one stage furniture was thrown at one or two members of the firm. The court imposed

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[1] HCSI-CRC 296-04 10th September 2004
[2] CMC 3 February 2005, per PM Hamilton-White
[3] HCSI-CRC 120-04 7 September 2005

sentences of 30 months for demanding and 25 months for stealing the two vehicles and made to run concurrently.

Application

There were aggravating factors in this case. The defendants came with a group of men to the home of the Complainants and made the demands with threats. It wasn't a friendly party or demand that was made. The defendants clearly meant business when they made the demands. There was presence of a gun in the vehicle at that time. The Complainants however had already been alerted by the actions of such groups going around terrorising and intimidating innocent members of the society at a time when law enforcement was virtually non-existent. There were indications that the men were under the influence of alcohol which would have increased the fear that the Complainants would have felt at such a time. There was a lot of unrestrained behaviour by such groups going around the city at that time terrorising and intimidating innocent victims. The Complainants had sought to take protective measures by having their vehicle placed at the residence of a friend but that did not help.

The facts as agreed to and presented before this court, however place this case at a lower scale of seriousness. Apart from the show of threats and demanding made no physical violence was actually committed. All the same it was a terrifying moment for them, as they felt obliged to disclose the whereabouts of the vehicle out of fear for the safety of their lives.

On the other hand, the guilty pleas entered into by the defendants must be given due credit. That is consistent with remorse and a desire to change apart from the utilitarian benefit received. That has been also consistent with the cooperative attitude of Patrick Iro in his willingness to assist the police regarding other serious murder charges pending in other separate cases involving former members of the Malaita Eagles Force and those who used to be his former colleagues. He has made statements and assisted police and it seems will be one of the key witnesses in that murder trial due to convene in January 2006. I take into account his previous convictions but note that the last major crime, (rioting) was more than ten years old and therefore should be ignored. I am satisfied I can deal with him in respect of these offences alone before me.

As for the other co-defendant, James Tatau, I am satisfied any sentence imposed should be similar as there is no suggestion they had a different part to play in those offences. Sentenced to 2 years for demanding and 6 months for simple larceny to be served concurrently.

As for the robbery charge against Patrick Iro in CRC 337-03, the aggravating factors included the use of force and intimidation to effect the robbery. You swerved your vehicle in front of him to force him to stop before threatening him and struggling with him to have the keys to his vehicle removed when he resisted. As a result minor injuries were sustained. He was a very brave man. He resisted to the point where his life was clearly threatened. You should have stopped at that point of time and respected his courage for standing up to you, but you did not. You insisted on pursuing with your unlawful behaviour having no concern and respect for this foreigner and his child. As strangers in this country, they deserve to be protected by you and not harmed. People who come to serve this nation should not be treated in this way; it is unacceptable behaviour even in our customs or religious beliefs. His child who was with him at that time was terrified by the incident. The vehicle was not retrieved until one week before RAMSI arrived in the country. That was clearly unacceptable behaviour.

I must not overlook on the other hand the strong mitigating factors raised on your behalf by your lawyer. She has told this court how you surrendered yourself to police on 19 September 2003 and have remained patiently waiting for your trial to be dealt with and concluded today. Not only that, but this court has been told of your cooperation with police since being held in custody, of how you gave vital evidence in relation to a particular murder case due to be heard in January next year and that you

will be one of the crucial witnesses in that case. This court was told that you gave that statement of your own volition, you were never charged for it and no benefits were promised to you and it was made knowingly of the grave risks that you and your family may be exposed to. These are relevant matters in mitigation. Your willingness and cooperation to assist is consistent with a change of heart and mind. I take that into account in the sentencing of your case.

Had this been a contested case, where a not guilty plea had been entered and the matter went to trial and a conviction entered, I would not have hesitated to impose a sentence of five years for this robbery alone. The mitigating factors raised in your favour however show very good prospects of rehabilitation and assimilation back into society despite the commission of those very serious crimes and your involvement. You have demonstrated that you are willing to change, that is to exercise your independent and free will to become a useful member to society by giving vital evidence in another very serious crime. You are on the right track and this court must allow and encourage such momentum that has been gained and picked up by you for the whole time you have spent in custody. I am prepared to reduce the sentence further by two years to 3 years.

Normally, where there are two separate offences, they would have been made consecutive to each other to reflect the seriousness of those offences. Those two offences have been dealt with together so that I can consider them once and determine the totality of the sentence to be imposed. Your lawyer has asked this court to consider totality principles in determining what is your appropriate sentence.

It is a well established principle in sentencing that when dealing with multiple offences, regard must be had to the total effects of the sentence on the offender[4]. The court must ensure that the total sentence imposed is appropriate to the criminality of the offender[5]. This is to avoid the imposition of total sentence if they were to be made cumulative, to have an extremely onerous effect. This defendant must be able to see the light at the end of the tunnel.

Bearing in mind the totality principle, it is my considered view, that in the particular circumstances of this defendant, having the sentence of 3 years for robbery and 2 years for demanding to be cumulative to each other would be too onerous and have such a crushing penalty on him. I order that the two sentences be served concurrently to each other. I note you have spent a considerable time in prison already, according to my calculation something like 26 months and 4 days. It would seem therefore that you have already served a substantial part of your term in prison and unless there are any outstanding issues with the prison authorities, which has not been brought to my attention, you may be entitled to be released straight away or as soon as thereafter.

Orders of the Court:

1. Patrick Iro and James Tatau:

(i) convicted for demanding with menaces contrary to section 295 of the Penal Code and sentenced to Prison for 2 years;

(ii) convicted for simple larceny contrary to section 261 and sentenced to prison for 6 months, to be served concurrent.

2. Patrick Iro:

(i) convicted of robbery contrary to section 293(1) of the Penal Code and sentenced to 3 years, to be served concurrent to the sentence of 2 years imposed in CRC 357-04.

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[4] R. v. Griffiths (1989) 167 CLR 372; 87 ALR 392, per Gaudron and McHugh JJ at 393.
[5] R. v. Clements (1993) 68 A Crim R 167 at 174 per Pinchus JA.

3. Total sentences: James Tatau – 2 years.
Patrick Iro – 3 years.

4. Periods spent in custody to be taken into account.

The Court.