HIGH COURT OF KIRIBATI

Criminal Case № 11/2017

THE REPUBLIC

v

TEIA TIATE

Tewia Tawita, Senior State Attorney, for the Republic
Teetua Tewera for the accused

Date of sentencing: 11 February 2019

SENTENCE

[1] Teia Tiate has pleaded guilty to 1 count of causing grievous harm with intent to cause grievous harm, contrary to section 218(a) of the *Penal Code* (Cap.67).

[2] The offence was committed on 3 October 2015, at the house of the complainant in Korobu village on South Tarawa. The prisoner and the complainant are cousins, but they have had a somewhat fractious relationship. On the day in question the complainant was drunk and the prisoner was "intoxicated, but not fully drunk". The complainant was upset with the prisoner for something the prisoner had said to the complainant's wife. The 2 men argued. The prisoner punched the complainant, causing him to fall down. The prisoner then kicked the complainant in the jaw, before gouging the complainant's right eye with his fingers. The complainant sustained a severe injury to the cornea of his right eye, which led to bullous keratopathy (a blister-like swelling of the cornea). According to the medical report tendered to the court, the complainant lost the sight of his right eye after the attack and experienced ongoing pain until the eye was eventually surgically removed in early 2018. The complainant, who had been a seafarer working aboard foreign fishing vessels, has been unable to return to work.

[3] An information was originally filed on 17 January 2017. For reasons unclear, the matter was not mentioned in court until 27 February 2018. On 1 June 2018 the court was informed that the prisoner would likely be pleading guilty. The case came before me on 10 August 2018, at which time the Attorney-General filed a fresh information (in the same terms) to meet the objection that the original information failed to comply with section 70 of the *Criminal Procedure Code*. On

24 August counsel for the prisoner confirmed that his client would be pleading guilty. Submissions on sentence were to be heard on 3 September.

[4] On 3 September the prisoner was arraigned and pleaded guilty. In the course of submissions, counsel for the prisoner said that it was his understanding that the complainant had made a full recovery from his eye injury. I pointed out to counsel that, if that were true, then the complainant's injury could not amount to grievous harm. The prisoner's plea of guilty was vacated and the matter was fixed for trial in the week commencing 4 February 2019. The week before the trial was to start, counsel for the prosecution provided the court with a medical report confirming that the complainant's eye had been removed. In the circumstances, counsel for the prisoner informed the court that his client wished to reinstate his original plea. The prisoner was re-arraigned on 6 February and again pleaded guilty.

[5] The prisoner is now 24 years of age. He is married, with 2 children aged 2 and 5. He leads a subsistence lifestyle. The prisoner can offer no real explanation for his conduct, other than to say that he was intoxicated, having consumed 5 cups of fermented yeast after returning from fishing earlier that day.

[6] In determining the appropriate sentence for the prisoner, I am mindful of the approach to sentencing recommended by the Court of Appeal.[1] The maximum penalty for causing grievous harm with intent to cause grievous harm is imprisonment for life.

[7] The Court of Appeal in 2 separate cases[2] has suggested that a court sentencing an offender charged with causing grievous harm with intent may find assistance from the New Zealand Court of Appeal decision in *R* v *Taueki*.[3] I note that the equivalent offence under section 188(1) of the New Zealand *Crimes Act* 1961 attracts a maximum penalty of 14 years' imprisonment, so an adjustment would ordinarily need to be made to allow for the higher maximum penalty that applies here. It is not apparent from either judgment of the Court of Appeal that the Court was aware of the disparity between the maximum sentences in Kiribati and New Zealand. In any event, as I am bound by decisions of the Court of Appeal, I must assume that it took the difference into account.

[8] In *Teuruba Teriao*[4] the respondent was convicted following a trial on a charge of causing grievous harm with intent, having seriously injured another man with a knife during a dispute over land. The Court of Appeal increased his sentence from

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1 *Kaere Tekaei* v *Republic* [2016] KICA 11, at [10].

2 *Republic* v *Teuruba Teriao* [2013] KICA 12; *Republic* v *Bwebwetaake Dan & Taniera Dan* [2014] KICA 4.

3 [2005] NZCA 174; [2005] 3 NZLR 372.

4 [2013] KICA 12.

2 years' imprisonment to 3½ years. The Court remarked that, if the *Taueki* analysis were to be applied, "the offending would not be at the bottom of band 1" (*ie.* a starting point of 3 to 6 years' imprisonment).

[9] In *Bwebwetaake Dan & Taniera Dan*[5] the respondents had been sentenced at first instance to imprisonment for 12 months, suspended for 12 months. They had pleaded guilty to causing grievous harm with intent following an attack on a 15-year-old boy that left the complainant unconscious. The complainant suffered the permanent loss of a tooth. The Court of Appeal expressed the view that this offending would fall at the bottom of band 1 in *Taueki*. The Court disagreed with the Chief Justice's decision to suspend the sentence and ordered the respondents to serve their sentences. The Court remarked that it would not have disturbed a sentence of 18 months' imprisonment in the circumstances of the case.

[10] The case before me today is a serious one. Applying the approach taken in *Taueki*, the prisoner's conduct would fall towards the lower end of band 2 (5-10 years). In particular, this case involves a significant attack to the complainant's head, resulting in permanent disability impacting on his quality of life. I am of the view that, had the prisoner been convicted after a trial, an appropriate starting point would be a sentence of 6 years' imprisonment.

[11] I consider that there are no particular aggravating features to this offending that have not already been taken into consideration in arriving at the starting point.

[12] As regards mitigating factors, the prisoner has no previous convictions. Despite the confusion surrounding the permanence of the complainant's injury, I am prepared to consider the prisoner's plea to be an early one, for which he is entitled to a significant reduction in sentence. I am satisfied that he is remorseful for his actions. For these matters I reduce his sentence by 18 months.

[13] It is relevant that there has been an unacceptable delay in the prosecution of this case. It has been almost 3½ years since the commission of the offence. Most of the blame for this delay does not lie with the prisoner. For the reasons discussed by the Court of Appeal in *Li Jian Pei*, the prisoner is entitled to a modest reduction in sentence to compensate him for the breach of his constitutional right to be afforded a fair hearing within a reasonable time.[6] I therefore reduce his sentence by a further 4 months.

[14] I take into consideration the fact that the prisoner has spent 5 days in custody awaiting sentence.

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5 [2014] KICA 4.

6 *Attorney-General* v *Li Jian Pei & Taaiteiti Areke* [2015] KICA 5.

[15] The prisoner is convicted on his plea of guilty. Taking all of the above matters into account, he is to be imprisoned for a period of 4 years and 2 months. The sentence is to run from today.

Lambourne J
Judge of the High Court