



IN THE DISTRICT COURT OF NAURU
CRIMINAL JURISDICTION

Criminal Case No. 49/2018

THE REPUBLIC

V.

DALE DEIRERAGEA

Prosecutor: Mr. Filimoni Lacanivalu

Defence: Mr. Ravunimasei Tagivakatini

Date of Hearing: 7th August 2018

Sentence: 9th August 2018

SENTENCE

Catchwords: *Sentence—Intentionally causing harm; Section 74 Crimes Act 2016; young offender; first offender; Police officer; extenuating circumstances.*

Introduction

1. You pleaded guilty one count of Intentionally Causing Harm contrary to section 74 (a) (b) (c) (ii) of the Crimes Act 2016. You pleaded guilty as soon as the summary of facts was provided.

The Facts

2. On the 3rd of March 2018, you were on duty as a Police officer. You finished your shift and were being transported home with other colleagues when you told the officer driving you, Marvin Tokaibure, not to drop you off home but to go and arrest Odini Aboubo, the complainant. You told officer Tokaibure that the complainant had sexually harassed your younger sister at the Moonlight store near RON Hospital. You told Officer Tokaibure that your cousin had conveyed your sister to the Police station to make the report.
3. You then went with Officers Tokaibure and Goodman and arrested the complainant at Denig. Officer Tokaibure repeatedly told you and Officer Goodman not to harm the complainant. You agreed and he repeated this warning at the Police station.
4. Officer Marvin was going to escort the complainant to the detention cell but you offered to do it. You went to the paddy wagon outside the station where the complainant was sitting with his hands cuffed, grabbed him and shouted at him. You then threw several

- punches at his face with one hand whilst holding onto him with the other hand. You were shouting at the complainant as you did this, telling him that your sister was a minor. The complainant denied harassing your sister and he said you threw him to the ground and kicked him several times in the face. You were stopped by a Police Inspector who saw what you were doing. She yelled at you asking why you were assaulting the complainant but you kicked him again in the face and yelled at the complainant demanding to know what he did with your sister.
5. The complainant, who is 19 years old, was taken to RON Hospital where he was medically examined and the examining doctor recorded the following injuries:-
 - a. small laceration to the right forehead;
 - b. small laceration on the right angle of the mouth; and
 - c. bruise and some scratches on the right upper chest.
 6. You admitted the offence when you were interviewed but said you only punched the complainant 2 or 3 times and denied kicking him. In your disciplinary record of interview conducted on the same day, you said your sister's report was already lodged and you had assigned yourself to attend to it. You said you assaulted the complainant because he didn't comply with being escorted. You admitted using your fist but denied kicking the complainant.
 7. You were a Police officer at the time of the assault and you have been interdicted on half pay since the incident. After you admitted the summary of facts, I found you guilty as charged and will address later herein whether a conviction should be entered against you or not.

The Submissions

8. I received very helpful submissions from Defence Counsel.
9. In line with the majority of the High Court of Australia, in *Barbaro v The Queen; Zirilli v The Queen*¹ which was affirmed as binding in Nauru by the Chief Justice in *Republic v Cecil [2018] NRSC 15*² I had directed the prosecution not to provide any submissions on what the sentence should be. In *Republic v Cecil (Supra)* the Chief Justice said: "I am minded to agree with Mr. Funnell and note that submissions made as to the range of appropriate sentencing by the Director of Public Prosecutions will be disregarded. I follow the majority judgement of this decision where at paragraph 7 it is stated³:

"The prosecution's statement of what are the bounds of the available range of sentences is a statement of opinion. Its expression advances no proposition of law or fact which a sentencing judge may properly take into account in finding the relevant facts, deciding the applicable principles of law or applying those principles to the facts to yield the sentence to be imposed. That being so, the prosecution is not required, and should not be permitted, to make such a statement of bounds to a sentencing judge."
10. The majority said however that the range of sentences should be used as a yardstick: *The history stands as a yardstick against which to examine a proposed sentence. What is important is the unifying principles which those sentences both reveal and reflect. And as each of Buchanan JA and Kellam JA rightly observed[in MacNeil-Brown, the synthesis of*

¹ [2014] HCA 2, [2014] HCA 2 (12 February 2014) particularly at paragraphs [6] – [7], [39], [40] & 41 per (French CJ, Hayne, Kiefel, Bell and Gageler JJ)

² Criminal Appeal 101 of 2016 (29 March 2018)

³ [2014] HCA 2, [2014] HCA 2 (12 February 2014) paragraphs [7]

the "raw material" which must be considered on sentencing, including material like sentencing statistics and information about the sentences imposed in comparable cases, is the task of the sentencing judge, not counsel.⁴

[references deleted] (emphasis mine)

In *The Queen v Pham [2015] HCA 39⁵*, the High Court of Australia, a few months after *Barbaro* (supra) was decided said at paragraph 27 that (1) *Consistency in sentencing means that like cases are to be treated alike and different cases are to be treated differently and (2) The consistency that is sought is consistency in the application of the relevant legal principles."*

The Charge

11. You are charged under section 74 (ii) of the Crimes Act which sets the maximum sentence at 7 years imprisonment.
12. Section 279 of the Crimes Act 2016 sets out the factors that the Court must take into account in sentencing an offender and I have taken the relevant ones into account in this sentence.

The Seriousness or Gravity of the Offending

13. The starting point is to look at the gravity of the offending which is the measure of the criminal fault of the defendant and the harm caused, intended or likely to have been caused by the offending. The gravity of the offending is sometimes called the seriousness of the offending. Sections 16-21 of the Crimes Act define the fault elements of the offending and explain each in detail. The fault elements start with negligence at the bottom, followed by reckless indifference to consent, recklessness, knowledge and with intentional acts at the top. This was an intentional act and therefore highest on the culpability scale.
14. The harm caused included the injuries that the complainant suffered which have been set out in the facts above.
15. I have taken account of the gravity of your offending and the harm caused and consider this to be at the middle level for this offence.

Aggravating Factors

16. The aggravating factors in this offending are that:-
 - a. you assaulted a helpless victim who was handcuffed;
 - b. you abused your position as a Police officer; and
 - c. disregarded all the warnings not to harm the complainant.

Personal Circumstances

17. You were a full time policeman at the time of the offending although you have been interdicted and on half pay since you were charged. You are 23 years old, single and engaged to be married. You reside at Yaren District with your family. Defence Counsel submits that you wish to be rehabilitated and return and be reemployed in the Police Force or elsewhere in order to continue supporting your family.

⁴ Ibid at para 41.

⁵ (4 November 2015)

Mitigation

18. In mitigation, your counsel submitted that you are a young first offender who pleaded guilty at the first opportunity; that you are remorseful and you promise not to reoffend. You fully co-operated with Police and admitted the offence to them. You have asked for a non-custodial sentence. There is no evidence that you have a habit of doing this.

Extenuating Circumstances

19. A strong mitigating factor in your favour is the extenuating circumstances which your counsel said led to you losing your cool. Extenuating circumstances are those that decrease your culpability. In order to lessen your culpability, there must be shown some link between the circumstances said to be extenuating and the commission of the offence.⁶
20. It can be inferred from the facts that you were very angry from what the complainant allegedly did to your sister, leading you to lose your temper and assault him and I find this amounts to extenuating circumstances in your offending.

The Sentence

21. Your counsel referred me to the case of *R -v- Jude Reweru [2018] [NRDC]* where this Court sentenced a Police officer who assaulted a young victim to a fine of \$900 without recording a conviction and \$300 in compensation to be paid to the victim. The facts are not as serious as yours because the offender there was off duty and had not used his position as a Police officer to commit the offence.

Sentence

22. I have considered the seriousness of your offending and the aggravating factors which take your offending to about the midpoint for this offence. I have taken account of your personal circumstances, and the fact that you have lost half your pay while this case has been hanging over you. I have taken account of the purposes of sentencing in section 278 and the requirements in section 280 of the Crimes Act 2016 directing the Court to impose a custodial sentence only if a condition there is met. I have carefully considered the extenuating circumstances and the fact that you are a young first offender and I find that a custodial sentence is not appropriate or warranted. Instead, I would give you an opportunity to rehabilitate yourself and I exercise my discretion not to record a conviction and impose on you a fine of \$1,400.00.

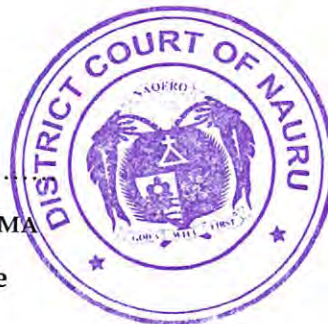
Orders

23. You are fined in the sum of \$1,400.00 with 56 days to pay, and in default, 6 months' imprisonment
24. You have 14 days to appeal.



PENIJAMINI R LOMALOMA

Resident Magistrate



⁶ Federal Commissioner of Taxation v Baffsky (2001) 122 A Crim R 568 at [47] per Spigelman CJ

⁷ Criminal Case No. 8/2018[Unreported]