



IN THE DISTRICT COURT OF NAURU

CRIMINAL JURISDICTION

Criminal Case No. 40 of 2020

THE REPUBLIC OF NAURU

-v-

CAREY AMRAM

SENTENCE

*Coram:* Penijamini R. Lomaloma

*Prosecution:* Ms. Susan Serukai

*Defence:* Mr. Ravunimasei Tagivakatini

*Hearing:* 31 August 2020

*Sentence:* 11<sup>th</sup> September 2020

**Catchwords:** *Breach of Domestic Violence Protection Order – Sentence. Contempt of Court – Sentence.*

**Introduction**

1. The accused pleaded guilty to one count of Breach of Protection Order: contrary to section 34 of the Domestic Violence and Family Protection Act 2017.

**The facts**

2. On 10<sup>th</sup> July 2020, the Court ordered an Interim Protection Order for one Shibub Appin in Domestic Violence Suit No. 12 of 2020. The accused had been arrested on one count of common assault and threatening to cause serious harm on his sister, Shibub Appin who was living with him at his home in Denig. An Interim Protection Order had been issued against him when he was bailed. The orders prohibited the Respondent/accused from, amongst other things, contacting the complainant in person or by electronic or any other means. On 12<sup>th</sup> July, the accused contacted

Shibub Appin via mobile phone. The reason he called her was that he was drunk and wanted some food from her. Shibub immediately informed the police about the matter and the accused was arrested.

### Seriousness

3. A court is required to pass a sentence that is commensurate with the seriousness of the offence. The seriousness of an offence is determined by two main parameters; the culpability of the offender and the harm caused or risked being caused by the offence. The seriousness of the offence will determine<sup>1</sup>:
  - a. which of the sentencing thresholds has been crossed;
  - b. indicate whether a custodial, community<sup>2</sup> or other sentence is the most appropriate;
  - c. be the key factor in deciding the length of a custodial sentence, the onerousness of requirements to be incorporated in a community sentence and the amount of any fine imposed.
4. The culpability of the offender starts with negligence at the lowest end, followed by recklessness, knowledge and at the very top are intentional acts.
5. This was an intentional act. There is no evidence of any pre-planning. The harm includes both physical and mental harm.<sup>3</sup> The complainant in the Domestic Violence matter was afraid of the accused and sought a protection order. Although the accused was acquitted of the criminal charges at his trial, as the evidence did not meet the criminal burden of proof, the Court was satisfied on the lower burden of proof required by the Domestic Violence and Family Protection Act that the Interim Protection Order was necessary. We can infer that Shibub Appin would have been afraid to be contacted by the accused about 48 hours after the order of the court had prohibited him from doing so. The more serious harm caused is to the community — an order of the Court designed to protect victims of domestic violence has been

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<sup>1</sup> UK Sentencing Guidelines Council: Overarching Principles: Seriousness Overarching Principles: Seriousness, para 1.3

<sup>2</sup> Community sentence is used here to describe a sentence of probation or community service under the Criminal Justice Act 1999

<sup>3</sup> Section 8 of Crimes Act 2016

disobeyed 2 days after it was given and such blatant disobedience must be punished if the Court is to maintain its credibility in the community.

6. Although no physical harm was caused to the victim, a blatant disobedience of the court order less than 2 days after it was given would, I can infer, cause serious worries in the victim and the community of the deterrent value of the order. This is a contempt of court and section 34 of the Domestic Violence and Family Protection Act 2017 clearly states that it is so.
7. I would therefore assess the seriousness of this offending close to but below the midpoint on the spectrum.

#### **Aggravating Factors**

8. The aggravating factor for this offence is that the order of the court was breached 2 days after it was issued.

#### **Personal Circumstances & Mitigation**

9. The accused is 46 years old and single. He worked at RONPHOS for 6 years and has lost his job as a result of the charges against him, including this one.
10. In mitigation, the accused acknowledges that what he did was wrong. He is remorseful for what he did. He said he only called his sister because he wanted some food. He is a first offender and has spent 6½ days in remand.

#### **Neighbouring Jurisdictions**

11. This is the first charge filed under section 34 of the Domestic Violence and Family Protection Act and there is therefore no precedent sentence. I have been referred by defence counsel to 2 sentences in Fiji under the equivalent legislation, the Domestic Violence Act 2009. The maximum sentence for the offence of breach of a domestic violence restraining order (DVRO) is a fine of up to \$1,000 or imprisonment of 12 months or both. There is no tariff in Fiji. The sentences referred to this court were from the Magistrates courts in Fiji and did not disclose any principles of the law to be applied for sentences for this offence.
12. The prosecution has referred the court to the New Zealand case of *Giltrap v the Queen*<sup>4</sup> where the appellant was sentenced to 5 months imprisonment for 5 counts of breach of section 19 and 49(1)(a) of the Domestic Violence Act (NZ) which carried a maximum sentence of 2 years imprisonment at the time of the offending. This

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<sup>4</sup> [2010] NZCA 157

maximum has since been increased to 3 years imprisonment. The Court of Appeal did not disturb this sentence which was not the lead sentence.

13. In *Public Prosecutor v Batley Pita*<sup>5</sup>, the Supreme Court of Vanuatu sentenced the accused to 12 months imprisonment for the equivalent of this offence. He had caused damage to the victim's home and made threats over the phone to kill her. The maximum sentence for this offence in Vanuatu is 2 years imprisonment and or a fine of 50,000 vatu.
14. In *R v Hamid (2006)*<sup>6</sup> the NSW Court of Criminal Appeal said this of the equivalent offence:-

*"86 In sentencing a domestic violence offender, and in particular a repeat domestic violence offender, specific and general deterrence are important factors, together with the requirement of powerful denunciation by the community of such conduct and the need for protection of the community. Recognition of the harm done to the victim and the community as a result of crimes of domestic violence is important."*

15. In *R v Kilic*<sup>7</sup>, the High Court said:-

*.. current sentencing practices for "offences involving domestic violence [may] depart from past sentencing practices for this category of offence because of changes in societal attitudes to domestic relations". It is undoubtedly the case that the criminal law, in the area of domestic violence, requires rigorous and demanding consequences for perpetrators for the purpose of protecting partners, family members and the wider community.*

16. In *Munda v State of Western Australia*<sup>8</sup> the High Court of Australia said that:

*it is a longstanding obligation of the State to vindicate the dignity of each victim of violence, to express the community's disapproval of that offending and to afford such protection as can be afforded by the State to the vulnerable against repetition of violence:*

*(emphasis mine)*

17. In *RYSZ v Police*<sup>9</sup>, the South Australian Supreme Court highlighted an important area of breaches of domestic violence protection orders when it said:

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<sup>5</sup> [2017] VUSC 177; Criminal Case 2112 of 2017 (7 November 2017)

<sup>6</sup> 164 A Crim R 179; [2006] NSWCCA 302 at 195-196 [86];

<sup>7</sup> (2016) 91 ALJR 131; [2016] HCA 48

<sup>8</sup> (2013) 249 CLR 600;

<sup>9</sup> [2011] SASC 167

*Nevertheless, I consider that, having regard to the important role of domestic violence restraining orders and of the necessity of courts promoting respect for their own orders, a sentence of imprisonment may be appropriate in those cases, like the present, in which the order has been repeatedly breached and the offender has not taken advantage of the leniency previously extended to him.*

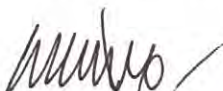
18. These sentences and comments indicate how seriously the neighbouring jurisdictions deal with breaches of domestic violence protection orders.

### **The Sentence**

19. Section 34 of the Domestic Violence and Family Protection Act makes the offence a contempt of court. It is the only one in the jurisdictions I have checked that has this requirement. A contempt of court is a serious offence and almost always attracts a custodial sentence. To allow breaches of a court order to be treated lightly is to undermine the respect and weaken the foundations of law and order. This offence requires an immediate custodial sentence to deter the accused and others from breaching its orders, especially the protection orders for vulnerable victims.
20. There are no sentences for this offence as yet and therefore there is no tariff.
21. From the assessment of the seriousness above, I would pick a starting point of 3 months imprisonment. I would increase this by 2 months for the aggravating factor. I would reduce it by 1 month for the mitigating factors and reduce it a further 1 month for the plea of guilty, leaving a sentence of 3 months imprisonment.

### **Orders**

22. The accused is convicted and sentenced to 3 months imprisonment less 65 days spent in pre-sentence remand.
23. 14 days to appeal.

  
Penijamini R Lomaloma  
Resident Magistrate

