



IN THE DISTRICT COURT OF NAURU

Criminal Case No 36 of 2020

THE REPUBLIC

-v-

STARSKY DAGAGIO

SENTENCE

Before: RM P. R. Lomaloma
For the Prosecution: Ms. Francis L Pulewai
For the Defendant: Mr. Ravunimasei Tagivakatini
Sentencing hearing: 17th June 2021
Sentence: 29th June 2021

Introduction

1. The defendant was initially charged on 29 June 2020 with 1 count of public nuisance under the Crimes Act 2016 and 2 counts of failing to adhere to instructions or rules of designated residence pursuant to regulations made under the National Disaster Risk Management (National Emergency for the Management and Minimisation of the Impacts of Coronavirus (COVID-19)) Regulations 2020 [the Covid Regulations]. He pleaded not guilty to these charges. The charges were amended on 14th September 2020 and 11th March 2021.
2. The matter was set down for trial on 16-17 March and the prosecutor amended the charge yet again on 16th June, after which the accused pleaded guilty to one count of "Failure to comply with obligations of occupants: contrary to Regulations 9 and 30(1) of the *National Disaster Risk Management Act 2016 (Management and Minimisation of the Impacts of Coronavirus (Covid-19) Regulation SL No. 4 of 2020 and Rule 8 of the Rules for Designated Residence Order No 2/2020*."
3. The particulars of the charge said that the accused breached the rule against consuming alcohol in the Designated Residence.
4. On 17th June the summary of facts were read to the accused and he pleaded guilty. He agreed with the summary of facts and I found him guilty as charged.

Background

5. On 16th of March 2020, His Excellency the President as Minister for National Emergency Services, declared a *National Emergency for the Management and Minimisation of the Impact of Coronavirus (COVID19)* pursuant to the powers granted to him in section 29(1) of

National Disaster Risk Management Act 2016. The declaration was for 30 days and it has been renewed every month until now.

6. On 16th March 2020, Cabinet enacted the *National Disaster Risk Management Act (Management and Minimisation of the Impacts of Coronavirus(Covid)) Regulations of 2020* [hereinafter referred to as the Covid Regulations of 19th March]. These regulations were made in exercise of the powers given in section 26 of the National Disaster Risk Management Act 2016.
7. The scheme of the Regulations of 19th March was to quarantine all arriving passengers for 14 days in Designated Residences and have them tested to ensure that they were not carrying the Covid-19 virus before they are released. Pursuant to Regulation 9 of the said Covid Regulations of 19th March, Rules for Designated Residences were made by the Minister and gazette on 4th April 2020. Regulation 9 also made it an offence to breach any of the provisions of the Rules for Designated Residence. Rule 8 (e) of the said rules states:

8 *All occupants must:-*
(e) *refrain from bringing into, obtaining or consuming any intoxicating substance or drugs in the Designated Residence.*

The Facts

8. The accused had returned from an overseas trip on 9th April 2020, 4 days after the Rules for Designated Residence was gazetted. The accused was one of the first incoming travelers to be quarantined under the said rules. He was quarantined with other passengers at Meneng Hotel, a declared Designated Residence by Order published in Gazette No. 68/2020 on 20th March 2020. The Rules were explained to the accused and other passengers in quarantine with him.
9. On 15th April 2020 Ad-astra Benjamin (PW1) was conducting a routine inspection of the Meneng Designated area and was informed by one Tiare Amram that the defendant had been drinking alcohol. PW1 came across the defendant whilst he was doing his routine check involved in a commotion with the other security staff members Taawi Otapu and Jonali Eward. PW1 approached the accused and tried to calm him down, telling him to return to his room. PW1 saw that the accused was heavily intoxicated and smelt heavily of alcohol. When PW1 saw that the accused continued to make problems for the security officers, he sought the assistance of two other police officers in quarantine, Moffat Mobit and Starleiy Duburiya, to arrest the accused.
10. The Police Taskforce team were then contacted and they removed the accused from Meneng Hotel and took him to the Police Station where he was charged and produced in court. The accused was remanded for 14 days.

Seriousness

11. The starting point is to assess the objective seriousness of the offending which is done by looking at the culpability and harm caused by the offending. The objective seriousness of the offending will determine the type of sentence to be given, the starting point of any prison sentence or the amount of fine to be awarded.
12. This was an intentional act and therefore highest on the culpability scale. The harm caused is relatively minor although the potential harm is very high. I would assess the seriousness of the offending at below the middle of the spectrum.
13. The aggravating factors of this offending are that the offender:-

- a. resisted attempts to take him back to his room;
- b. caused the safety bubble he was in to be breached by police officers coming in from outside.

Personal Circumstances

14. The defendant is 42 years old and married with four boys aged 20, 15, 7 and a girl of 15. His oldest son is working but the younger 3 are all at school. He is a sergeant in the Nauru Police Force and since joining in 2003, he has never been the subject of disciplinary proceedings until 2020.
15. As a result of charges filed against him, he was disciplined internally by the Nauru Police Force and has been suspended from his job and is on half pay of \$250 a fortnight from June 2020. He has lost about \$6,000 in pay as a result of his offence.
16. Defence counsel submitted that Covid 19 was declared a global pandemic on 11 March 2020 and it was a new phenomenon which had never been experienced in this generation. The offending occurred 1 month after the global announcement and many were still adjusting to the new norm. He submits further that while ignorance of the law is no excuse, the Regulations were enacted on 4th April, the defendant arrived here on the 9th of April and the offence took place on 15th April. The defendant was in the first group that were quarantined and his approach to the quarantine was casual as the rules were not very clear to him at the time.

Mitigation

17. The mitigating factors of this offending are:-
 - a. The accused is a first offender at 42 which means he has been a law abiding citizen;
 - b. The accused pleaded guilty and saved the time for a trial;
 - c. He acknowledges that what he did was wrong and he is remorseful;
 - d. He has been disciplined in the police force and punished by losing half his pay in about 12 months which amounts to about \$6,000;
 - e. He was remanded in isolation for 14 days; and
 - f. He wants to rejoin the police force.

The submissions

18. I thank counsel for their submissions.
19. Defence has referred to sentences in May 2020 when four nurses who breached the regulations were given spot fines of \$1,000 under the *National Disaster Risk Management (Coronavirus (Covid 19) (Community Transmission and Public Health Safety Regulations 2020)*. These regulations were not in force at the time the defendant committed his offences. Following their remand, they paid the fixed penalty of \$1,000 within a week and the prosecution withdrew the charges against them. Two of the nurses were outside and two inside the quarantine fence and they made physical contact contrary to the regulations. Although the nurses were fined after a latter regulation not in force at the time this defendant committed this offence, the amount of the fixed penalty is a clear indication of the sentence for a similar offence.

Sentence

20. Regulation 30 of the *National Disaster Risk Management Act (Management and Minimisation of the Impacts of Coronavirus(Covid)) Regulations of 2020* states that a person who contravenes any provision of the regulations commits a strict liability offence and upon

conviction is liable to a fine of \$50,000 or a term of imprisonment not exceeding 5 years or both.

21. Section 23 of the Crimes Act defines a strict liability offence as one where no fault element is required to prove the physical elements of the offence.
22. Section 278 of the Crimes Act lists the purposes of sentencing. This is a regulatory offence and I believe the primary purpose of this sentence must be to denounce the defendant's actions and to deter other people in a Designated Residence from committing breaches of the Rules.
23. I have taken into account the fact that the defendant has had this case delayed for over 12 months by facts beyond his control. The charges were amended 3 times by the prosecution and the accused finally pleaded guilty on the day of the trial when the new prosecutor amended it further.
24. In *R v Hogan, R v Thompkins*¹ two prisoners had been dealt with by visiting justices for offences against prison discipline under the Prison Rules 1949. They were subsequently convicted of a charge of escape in the criminal courts. The prisoners appealed on the grounds that their case having been heard by the visiting justices is a bar against criminal proceedings. The English Court of Appeal held that the visiting justices were not a competent court and not a bar to a criminal trial. The CCA however said *per curiam* that in deciding any sentence, the court would have to take into account any sentence before the visiting justices.
25. The accused was disciplined in the Nauru Police Force and he was suspended in June 2020 until now. His pay of over \$500 per fortnight has been reduced by a half and he has effectively lost about \$6,000 as a result of his offending. He and his family would have been greatly affected by that punishment. I will take account of this punishment in this sentence.

The Sentence

26. Section 277 lists the types of sentences available to a court. This is a regulatory offence and I do not consider a conviction to be appropriate for regulatory offences. They should be reserved for serious criminal offences.
27. I have taken account of the matters in section 280 of the Crimes Act and I consider that a custodial sentence is not appropriate. I have taken account of the matters in sections 277 and 279 of the Crimes Act, the personal circumstances of the accused, the aggravating factors and mitigating factors and the fact that the accused has lost \$6,000 as a result of his offending and I fine him in the sum of \$500.

Orders

28. Without recording a conviction, the defendant is fined in the sum of \$500, 28 days to pay and in default of payment, 50 days imprisonment.
29. 14 days to appeal.

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Penijamini R Lomaloma
Resident Magistrate

¹ [1960] 3 All ER 149,