



**IN THE DISTRICT COURT OF NAURU
AT YAREN
CRIMINAL JURISDICTION**

Criminal Case No. 43 of 2024

BETWEEN: THE REPUBLIC OF NAURU

PROSECUTION

AND: KEANU AMRAM

DEFENDANT

BEFORE: Resident Magistrate Mr. Vinay Sharma

DATE OF HEARING: 5 March 2025

DATE OF SENTENCING: 31 March 2025

APPEARANCE:

PROSECUTION: W Deiye

DEFENDANTS: S Hazelman

SENTENCE

INTRODUCTION

1. Keanu Amran pleaded guilty to:
 - i. One count of public nuisance contrary to section 248(1)(a)(b) and (2)(a)(i)(v) of the Crimes Act 2016; and
 - ii. Another count of obstructing a public official contrary to section 242(a)(b) of the Crimes Act 2016
2. I am to sentence Keanu for the offences for which he has pleaded guilty. The facts surrounding the offending and Keanu's personal circumstances are undisputed.
3. There are no disputes about the issues I will determine under section 279 of the *Crimes Act 2016*. Further, there are no disputes about the sentencing principles to be applied. Therefore, the issues before me for determination are:
 - i. Should Keanu be convicted as charged?
 - ii. What is the objective seriousness of the offending?
 - iii. What is the sentencing range?
 - iv. Whether a custodial sentence is appropriate in the circumstances?
 - v. Whether a record of conviction is to be entered against Keanu?
 - vi. What is the appropriate sentence to be handed down to Keanu?
4. The following are my reasons for the sentence.

FACTS SURROUNDING THE CIRCUMSTANCES OF THE OFFENCE

5. On 1 December 2024 Constable Conway ("PW1"), Jago ("PW2"), Senior Constable Rocco ("PW3"), and Constable Brimad ("PW4") attended to a report at Anabar District.
6. Upon arriving at Anabar District, the prosecution witnesses witnessed a brawl taking place. There were a lot of drunkards at the place.
7. PW3 witnessed people trying to stop Keanu, who was behaving aggressively.

8. PW1 and PW3 approached Keanu. PW3 grabbed Keanu by the waist and informed him that he would be arrested for public nuisance. Thereafter, PW3 gave Keanu his rights. PW1 then escorted him to the police vehicle's "can-cage".
9. Upon arriving at the "can-cage", Keanu pushed PW3 and resisted arrest. PW3 then grabbed Keanu, and then Keanu's fist swung and hit PW3's lips.
10. PW2 then assisted PW3 in restraining Keanu and putting him in the "can-cage". He was then taken to the police station.
11. PW3 sustained a minor bruise on the inner part of his lower lip.

PERSONAL CIRCUMSTANCES OF THE DEFENDANT

12. Keanu's personal circumstances are:
 - i. He is 32 years old and is married to Blonnie Amram. They have two children, 7 and 8 years old.
 - ii. He is currently employed as a security officer and earns approximately \$400 per fortnight. Prior to this employment, he stayed home and looked after his children.
 - iii. His wife is employed at Eigigu Supermarket on minimum wage.
 - iv. He also goes fishing to support his family.
 - v. He stopped consuming alcohol when he had his first child
 - vi. He is well-liked in his community, which is evident from the various referees who provided written statements on his behalf.
 - vii. His offending was a one-off out-of-character incident.

AGGRAVATING FACTORS

Count 1

13. I find the following aggravating factors that apply to Keanu in relation to count 1:

- i. He engaged in threatening behavior.
- ii. His conduct was disorderly and disruptive.

Count 2

14. I find the following aggravating factors that apply to Keanu in relation to count 2:

- i. He used force by pushing PW3.
- ii. He inadvertently caused minor injury to PW3.

MITIGATING FACTORS

15. I find the following mitigating factors apply in favor of Keanu for both counts:

- i. There is a high chance that he will rehabilitate.
- ii. He was intoxicated.
- iii. He is remorseful.
- iv. He pleaded guilty at the earliest possible opportunity available to him.
- v. Force used was minimal in nature.
- vi. Injury caused to PW3 was unintentional and was minor in nature.
- vii. The level of violence used was minimal.

SHOULD KEANU BE CONVICTED AS CHARGED?

16. Section 190(4) of the Criminal Procedure Act 1972 provides as follows:

Where the Court has recorded a finding under this Section that an accused is

guilty of the offence charged, it shall, after hearing him or her, or his or her legal practitioner if any, as to any mitigating circumstances and any evidence thereof which may be advanced, either convict him or her and pass sentence on, or make an order against, him or her in accordance with the law or, if authorised by any written law to do so, discharge him or her without proceeding to conviction.

17. No material before me would justify a finding that Keanu should not be convicted as charged. Therefore, I convict Keanu as charged.

WHAT IS THE OBJECTIVE SERIOUSNESS OF THE OFFENDING?

Count 1

18. There is no evidence of harm or discomfort caused to the members of the public. Further, the incident occurred during the wedding of Keanu's cousin. The alleged conduct giving rise to the offence was out of character for Keanu. He was heavily intoxicated. The level of violence was minimal. His moral culpability is minimal. In light of Keanu's personal circumstances, aggravating and mitigating circumstances, and moral culpability, I find that the objective seriousness of the offending in count 1 is at the lowest end of the scale of severity.

Count 2

19. The defendant was heavily intoxicated and was not aware of what he did. The level of force used was minimal. Injuries caused were unintentional and minor in nature. Keanu's moral culpability is minimal. In light of Keanu's personal circumstances, aggravating and mitigating circumstances, and moral culpability, I also find that the objective seriousness of the offending in count 2 is at the lowest end of the severity scale.

WHAT IS THE SENTENCING RANGE?

Count 1

20. The maximum penalty for offences under section 248 of the *Crime Act 2016* is 6 months imprisonment.
21. In *Republic v Riko Akubor*, Criminal Case No. 89 of 2018, the District Court, without

entering a conviction, fined the defendant a sum of \$300. The defendant in that matter was drunk and disorderly, chased a male refugee, punched a driver and had to be restrained by police officers.

Count 2

22. For offences under Section 242 of the ***Crimes Act 2016***, the maximum penalty is 2 years imprisonment.
23. In ***Kepae v Republic*** [2023] NRSC 11, the defendant was sentenced to six months imprisonment for wilfully obstructing police officers while they were escorting His Excellency the President of the Republic of Nauru.
24. In ***Republic v Lovani Jeremiah*** [2024] NRSC 14, the Supreme Court, without entering a conviction, fined the defendant in that matter a sum of \$500 for obstructing a public official. In that matter, the defendant refused to abide by the police instructions and resisted arrest. She also unintentionally struck an officer with her arm. The Supreme Court relied on the fact that she was a first-time offender and had a high chance of rehabilitation.

SENTENCING APPROACH AND PRINCIPLES

25. Section 278 of the ***Crimes Act 2016*** provides the following purposes for sentencing an offender:

278 Purposes of sentencing

The purposes for which a court may impose a sentence on an offender are as follows:

- (a) to ensure that the offender is adequately punished for the offence;*
- (b) to prevent crime by deterring the offender and other people from committing similar offences;*
- (c) to protect the community from the offender;*
- (d) to promote the rehabilitation of the offender;*
- (e) to make the offender accountable for the offender's actions;*
- (f) to denounce the conduct of the offender; and*
- (g) to recognise the harm done to the victim and the community.*

26. Section 279 of the *Crimes Act 2016* outlines the considerations that the court must consider when sentencing a person found guilty of an offence. The considerations under this section stems from Section 278 of the *Crimes Act 2016*.
27. Section 280 of the *Crimes Act 2016* provides the sentencing considerations that must be considered when deciding whether a term of imprisonment is appropriate.
28. Section 281 of the *Crimes Act 2016* provides the considerations that the court must consider as far as possible when deciding to impose a fine on a person found guilty of an offence.
29. Hunt CJ at CL in the Court of Criminal Appeal of NSW in *R v MacDonell*¹ stated that:

The sentencing procedures in the criminal justice system depend upon sentencers making findings as to what the relevant facts are, accepting the principles of law laid down by the Legislature and by the courts, and exercising a discretion as to what sentence should be imposed by applying those principles to the facts found.

30. Section 278 of the *Crimes Act 2016* adopts the common law principles of sentencing as was found in *Veen v The Queen (No 2)*² with reference to a similar sentencing provision in Australia. In that case Mason CJ, Brennan, Dawson and Toohey JJ in their judgment in the High Court of Australia made useful observations with regard to the interaction between the different sentencing purposes:

... sentencing is not a purely logical exercise, and the troublesome nature of the sentencing discretion arises in large measure from unavoidable difficulty in giving weight to each of the purposes of punishment. The purposes of criminal punishment are various: protection of society, deterrence of the offender and of others who might be tempted to offend, retribution and reform. The purposes overlap and none of them can be considered in isolation from the others when

¹ (unrep, 8/12/95, NSWCCA) at [1]

² (1988) 164 CLR 465

*determining what is an appropriate sentence in a particular case. They are guideposts to the appropriate sentence but sometimes they point in different directions.*³

31. Further, the High Court of Australia in *Muldrock v The Queen*⁴ reconfirmed the common law heritage of the relevant provision:

The purposes there stated [in s 3A] are the familiar, overlapping and, at times, conflicting, purposes of criminal punishment under the common law [Veen v The Queen (No 2) at 476–477]. There is no attempt to rank them in order of priority and nothing in the Sentencing Act to indicate that the court is to depart from the principles explained in Veen v The Queen (No 2) [at 476] in applying them. [Relevant footnote references included in square brackets.]

32. Having referred to the cases above on the application of the purposes for sentencing, I now emphasize on how the principle of proportionality as a fundamental sentencing principle guides and binds the balancing exercise of a sentencer with regard to the various purposes of sentencing referred to in Section 278(b)(c)(d)(e)(f) & (g) of the *Crimes Act 2016*. In this regard, Howie J, with whom Grove and Barr JJ agreed, made the following observations in the Court of Criminal Appeal of NSW in *R v Scott*⁵:

There is a fundamental and immutable principle of sentencing that the sentence imposed must ultimately reflect the objective seriousness of the offence committed and there must be a reasonable proportionality between the sentence passed and the circumstances of the crime committed. This principle arose under the common law: R v Geddes (1936) SR (NSW) 554 and R v Dodd (1991) 57 A Crim R 349. It now finds statutory expression in the acknowledgment in s 3A of the Crimes (Sentencing Procedure) Act that one of the purposes of punishment is “to ensure that an offender is adequately punished”. The section also recognises that a further purpose of punishment is “to denounce the conduct of the offender”.

³ *Veen v The Queen (No 2)* (1988) 164 CLR 465

⁴ (2011) 244 CLR 120 at [20]

⁵ [2005] NSWCCA 152 at [15]

33. An example of how the principle of proportionality operates is also found in *Veen v The Queen (No 2)*, *supra* where the High Court of Australia held that a sentence should not be increased merely to protect the community from further offending by the offender if the result of which would be a disproportionate sentence. In that case, Mason CJ, Brennan, Dawson and Toohey JJ made the following useful observations at [473]:

It is one thing to say that the principle of proportionality precludes the imposition of a sentence extended beyond what is appropriate to the crime merely to protect society; it is another thing to say that the protection of society is not a material factor in fixing an appropriate sentence. The distinction in principle is clear between an extension merely by way of preventive detention, which is impermissible, and an exercise of the sentencing discretion having regard to the protection of society among other factors, which is permissible.

34. Lamer CJ in the Canadian Supreme Court in *The Queen v CAM*⁶ found that retribution in sentencing represents:

...an objective, reasoned and measured determination of an appropriate punishment which properly reflects the moral culpability of the offender, having regard to the intentional risk-taking of the offender, the consequential harm caused by the offender, and the normative character of the offender's conduct.

35. Howie J in the Court of Criminal Appeal of NSW in *R v Zamagias*⁷ made the following useful observations on the interaction of the various sentencing purposes and how the advancement of one purpose may achieve the goal of another:

It is perhaps trite to observe that, although the purpose of punishment is the protection of the community, that purpose can be achieved in an appropriate case by a sentence designed to assist in the rehabilitation of the offender at the expense of deterrence, retribution and denunciation...

⁶ [1996] 1 SCR 500 at [80]

⁷ [2002] NSWCCA 17 at [32]

36. In light of the above, I find that all of the purposes of sentencing would need to be considered and balanced against each other to reach a sentence which conforms with the fundamental sentencing principle of proportionality. No one purpose has priority over the other. The amount of weight that would be given to each purpose would depend on the circumstances of the offending, mitigating and aggravating factors, and the offender's personal circumstances.

WHETHER A RECORD OF CONVICTION IS TO BE ENTERED AGAINST KEANU?

37. I have considered Sections 277 (a) and (b) of the Crimes Act 2016. Keanu's referees stated that his life has changed ever since moving to Anabar and marrying his wife, and what happened during the incident is now out of character for him. This is not disputed by the prosecution. In similar types of offences, which are at the least severe level for counts 1 and 2, the courts have fined the defendants without entering a conviction. Therefore, I find that in the current circumstances, a record of conviction should not be entered against the defendant for counts 1 and 2.

IS A CUSTODIAL SENTENCE APPROPRIATE?

38. The offending involved minimal violence. Further, the courts have issued non-custodial sentences in similar types of offending for counts 1 and 2. Therefore, I find that a custodial sentence is inappropriate for counts 1 and 2.

WHAT IS THE APPROPRIATE SENTENCE TO BE HANDED DOWN TO KEANU?

39. I have considered Section 281 of the *Crimes Act 2016*. The Pre-Sentence Report contains information with regard to Keanu's employment. A fine may not be appropriate in the current circumstances.
40. Section 22 of the *Criminal Justice Act 1999* allows the court to make an order for community service against a person over 13 who has been found guilty of an offence punishable by imprisonment. I find that an order for community service against the defendant for counts 1 and 2 is appropriate based on my earlier findings that a custodial sentence is inappropriate.
41. Section 25 of the *Criminal Justice Act 1999* provides for the content of a community

service order. I have considered them and make orders accordingly.

42. I also find that a probation order is appropriate in the current circumstances. Sections 7(1), 8(1), and 11(1) of the *Criminal Justice Act 1999* are relevant in relation to a probation order. Section 7(1) of the *Criminal Justice Act 1999* provides that “where a person is **convicted** of an offence punishable by imprisonment the court may, instead of sentencing him or her to imprisonment, make a probation order releasing the person on probation for a period specified in the order, being a period of not less than 1 year nor more than 3 years”.
43. The term convicted has been interpreted by the courts flexibly. In *HA & SB v The Director of Public Prosecutions*⁸ the Supreme Court of New South Wales made the following observation at [9] of its judgment with regard to the interpretation of the term convict:

9 The words “convict” and “conviction” are not words of constant meaning with universal application. In Maxwell v The Queen (1996) 184 CLR 501 at 507, Dawson and McHugh JJ said:

“The question of what amounts to a conviction admits of no single, comprehensive answer. Indeed, the answer to the question rather depends upon the context in which it is asked. On the one hand, a verdict of guilty by a jury or a plea of guilty upon arraignment has been said to amount to a conviction. On the other hand, it has been said that there can be no conviction until there is a judgment of the court, ordinarily in the form of a sentence, following upon the verdict or plea.”

and reference was made to Burgess v Boetefeur (1844) 7 Man & G 481 at 504, 135 ER 193 at 202, R v Tonks [1963] VR 121 at 127-8, R v Jerome and McMahon [1964] Qd R 595 at 604 and Richards v The Queen (1993) AC 217 at 226-7.

⁸ [2003] NSWSC 347

44. Section 65 of the *Interpretation Act 2011* defines “conviction” as “a finding of guilt by a court, whether or not the conviction is recorded”. In the current context, the term “convicted” must be interpreted to mean “a finding of guilt by a court, whether or not conviction is recorded”. This interpretation was adopted in the Supreme Court of Nauru in *Republic v BR*⁹. This court is bound by the Supreme Court’s interpretation in that matter.

ORDERS

45. I make the following orders:

Count 1

1. That a conviction is not recorded against Keanu Amram for count 1.
2. That a community service order is made against Keanu in the following terms:
 - i. Keanu is to carry out two hours of community service every Saturday on a weekly basis commencing from 5 April 2025 for a period of 1 month.
 - ii. Keanu is to report to the Chief Probation Officer on 3 April 2025 at 12pm.
 - iii. The Chief Probation Officer shall give necessary directions on the community service to be undertaken.

Count 2

3. That a conviction is not recorded against Keanu Amram for count 2.
4. That a community service order is made against Keanu in the following terms:
 - iv. Keanu is to carry out two hours of community service every Saturday on a weekly basis commencing from 5 April 2025 for a period of 3 month.
 - v. Keanu is to report to the Chief Probation Officer on 3 April 2025 at 12pm.
 - vi. The Chief Probation Officer shall give necessary directions on the community service to be undertaken.
5. The community service orders for counts 1 and 2 are to be served concurrently. Therefore, Keanu is to carry out community services for a period of 3 months

⁹ Supreme Court Criminal Case No. 3 of 2024

only.

6. That a probation order is made against Keanu for a period of 1 year, effective from the date of the expiration of the community service order. The conditions of the probation order are as follows:

- i. Keanu shall report in person to the Chief Probation Officer under whose supervision he is placed at a time provided by the Chief Probation Officer after the expiry of the community service order, and shall further report as and when he is required to do so by the Chief Probation Officer;
- ii. Keanu shall reside at his current place of residence and give to the Chief Probation Officer reasonable notice of his intention to move from his current place of residence;
- iii. Keanu shall not reside at an address that is not approved by the Chief Probation Officer;
- iv. Keanu shall not continue in an employment, or continue to engage in an occupation that is not approved by the Chief Probation Officer;
- v. Keanu shall not associate with a specified person, or with persons of a specified class, with whom the Chief Probation Officer has, in writing, warned him not to associate; and
- vi. Keanu shall keep the peace, be of good behaviour and commit no offence against the law.

7. That the parties are at liberty to appeal this sentence within 21 days from 31 March 2025.

Dated this 31 day of March 2025.



Resident Magistrate
Vinay Sharma