



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

Criminal Case No. 32 of 2024

BETWEEN: **THE REPUBLIC OF NAURU**

PROSECUTION

AND: **DR**

DEFENDANT

BEFORE: Resident Magistrate Mr. Vinay Sharma

DATE OF HEARING: 4 December 2024

DATE OF SENTENCING: 3 January 2024

APPEARANCE:

PROSECUTION: W Deiyē

DEFENDANTS: R Tagivakatini

SENTENCE

INTRODUCTION

1. DR pleaded guilty to the following offences:
 - i. Count 1 – Driving a motorcycle without a helmet contrary to section 57(1) & (4) of the *Motor Traffic Act 2014* (“the Act”);
 - ii. Count 2 – Driving a motorcycle without a licence contrary to sections 20(2)(a) and 27(a) of the Act;
 - iii. Count 3 – Dangerous driving contrary to section 67(1)(a)(b) or (c) of the Act; and
 - iv. Count 4 – Obstructing public official contrary to section 242 (a)(b) of the *Crimes Act 2016*.

2. I am to sentence DR for the offences he has pleaded guilty to.

3. DR is a first-time offender. he was 16 years old at the time of the offending. Special consideration has been given in this case to his age at the time of the offending.

4. There are no disputes as to the issues that I am to determine under section 279 of the *Crimes Act 2016*. Further, there was no dispute as to the sentencing principles to be applied. Therefore, the issues before me for determination are:
 - i. Should DR 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 DR?
 - vi. What is the appropriate sentence to be handed down to DR?

5. The following are my reasons for the sentence.

FACTS SURROUNDING THE CIRCUMSTANCES OF THE OFFENCE

6. On 19 February 2023 at around 11pm DR was travelling towards Capelle Mini Mart from the direction of RON Hospital. He was travelling on his motorcycle, a red/black scrambler.

7. At all material times, there was a traffic blitz in place where Police officers were stationed near the pathway on the hillside beside Capelle Mini Mart and at the T-Shop, Denig District.

8. While travelling towards the direction of Capelle Mini Mart, DR came across police officers stationed near the hillside. The officers waved their hands to stop DR. He went past them, and when he reached Capelle Mini mart he made a u-turn and drove the same way back. Thereafter, he made an immediate left turn into the old T-Shop junction at high speed.
9. Officer Anton Iga was stationed at the T-Shop junction. Officer Iga waved at DR to slow down and stop his motorbike. Instead of stopping the motorbike, DR drove his motorbike straight to Officer Iga and collided with him and then collided with a wall. Officer Iga sustained minor injuries as a result of the collision.

PERSONAL CIRCUMSTANCES OF THE DEFENDANTS

10. DR's personal circumstances are:
 - i. He is 18 years old and is single.
 - ii. He resides with 3 of his siblings, his aunts and cousins.
 - iii. His 3 younger siblings and his mother live separately.
 - iv. He attended his final year in Nauru Secondary School ("NSS") last year.
 - v. He goes fishing and hunts Noddy birds to support his family.
 - vi. He is well liked in his community.

AGGRAVATING FACTORS

Counts 1 & 2

11. Counts 1 and 2 are strict liability offence with fixed penalties, fines.

Count 3

12. I find the following aggravating factors apply to DR:
 - i. He committed other traffic offences while driving dangerously, that is he drove his motorbike without a helmet and did not have a driver's licence as he was below the age requirement to obtain a driver's licence.
 - ii. He started to over speed and drove erratically when stopped by the police officers.
 - iii. He caused minor injuries to Officer Iga.

Count 4

13. I find that the only aggravating factor for count 4 is that DR caused minor injuries to Officer Inga as a result of his offending.

MITIGATING FACTORS

14. I find the following mitigating factors in favor of DR:
- i. There is a high chance that he will rehabilitate.
 - ii. He is remorseful.
 - iii. He does not have any previous convictions.
 - iv. He pleaded guilty at the earliest possible opportunity.
 - v. He was a juvenile at the time of his offending and lacked maturity.

SHOULD DR BE CONVICTED AS CHARGED?

15. 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.

16. DR pleaded guilty to the offences mentioned in [1]. There is no material before me that would justify a finding that DR not be convicted as charged. Therefore, I convict DR as charged.

WHAT IS THE OBJECTIVE SERIOUSNESS OF THE OFFENDING?

Count 1 & 2

17. Counts 1 & 2 are strict liability offences with fixed penalties. There is no need to determine the objective seriousness for the offending in counts 1 and 2.

Count 3

18. In light of DR's personal circumstances, aggravating and mitigating circumstances, and his moral culpability, I find that the objective seriousness of DR's offending in Count 3 is at the low to mid-range of the level of seriousness.

Count 4

19. In light of DR's personal circumstances, aggravating and mitigating circumstances, and his moral culpability, I find that the objective seriousness of DR's offending in Count 4 is at the lower range of the level of seriousness.

WHAT IS THE SENTENCING RANGE?

Counts 1 & 2

20. There are no sentencing ranges for counts 1 and 2 because they are strict liability offences with fixed penalties.

Counts 3 & 4

21. There are insufficient decided cases involving juveniles in relation counts 3 and 4 to form an appropriate sentencing range. Therefore, the sentence will be determined based on the circumstances of the case.
22. Section 67(1)(a)(b) & (c) of the Act provides the penalty for the offence of dangerous driving which includes a "*suspension of...driver's licence for a period of 1 year and is subject also to any of the following*":

(a) a fine of \$1,000;

(b) imprisonment for 6 months; or

(c) both a fine and imprisonment.

23. The fine under section 67(1)(a) is fixed at \$1000. There is no discretion to impose a lesser amount.
24. The maximum penalty under section 242 of the Crimes Act 2016 is a term of imprisonment for 2 years.

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 take into account 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 taken into account when deciding whether a term of imprisonment is appropriate.
28. Section 281 of the **Crimes Act 2016** provides the considerations that the court must take into consideration as a far 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 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

¹ (unrep, 8/12/95, NSWCCA) at [1]

² (1988) 164 CLR 465

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

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”.

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

⁴ (2011) 244 CLR 120 at [20]

⁵ [2005] NSWCCA 152 at [15]

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...

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 personal circumstances of the offender.

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

37. I have considered Section 277(a) & (b) of the *Crimes Act 2016*. Counsel for DR sought a non-conviction be recorded. He relied on the fact that DR was 16 years old at the time of the offending and that he is a first-time offender. In the current circumstances, I also find that a record of conviction would have a detrimental effect on DR's future prospects. He just completed his secondary school studies. Therefore, I find that this is not an appropriate instance in which a conviction is to be recorded.

IS A CUSTODIAL SENTENCE APPROPRIATE FOR COUNT 3 AND 4?

38. DR was 16 years old at the time of the offending. I have considered the *Child Welfare and Protection Act 2016* and the requirement that a term of imprisonment is a sentence of last resort. In the current circumstances, DR pleaded guilty at the earliest possible time and his moral culpability is low due to his age at the time of the offending. Further,

⁶ [1996] 1 SCR 500 at [80]

⁷ [2002] NSWCCA 17 at [32]

the objective seriousness of the offending for counts 3 and 4 are not high. Therefore, pursuant to Section 280 of the *Crimes Act 2016*, I find that a term of imprisonment is not an appropriate sentence in this case.

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

39. Upon careful consideration of the sentencing principles, case authorities and the relevant factors in relation to the nature of the offending, the following are my findings in relation to the appropriate sentence for counts 1, 2, 3 and 4.

40. I have considered Section 281 of the *Crimes Act 2016*. Further, I have also considered that other factors may also be taken into account when determining the means of a person, that is, payment by a third party: see *St Clare v. Wilson* (1994) S.L.T. 564. In the current circumstances DR is 18 years old and relies on his family for financial support. He is to provide a surety for the payment of any fine imposed against him. The surety is to execute a bond undertaking for the payment of any fine imposed on DR.

Count 1

41. Section 57(4) of the Act imposes a fixed penalty of \$200 for a failure to wear a helmet while riding a motor bike. DR shall be imposed a fine accordingly.

Count 2

42. Section 20(2)(a) of the Act imposes a fixed penalty of \$100 for the offence of driving a motor vehicle without a valid driver's licence. DR shall be imposed a fine accordingly.

Count 3

43. Section 67(1)(a)(b) & (c) of the Act provides the penalty for the offence of dangerous driving which includes a "*suspension of...driver's licence for a period of 1 year and is subject also to any of the following*":

(a) a fine of \$1,000;

(b) imprisonment for 6 months; or

(c) both a fine and imprisonment.

44. In light of my finding that a custodial sentence is not appropriate in the current circumstances, DR's driver's licence shall be suspended for a period of 1 year with immediate effect and he shall be fined \$1000. The Deputy Registrar of the District Court is to inform the issuing agency of the suspension of DR's driver's licence.

Count 4

45. In light of [38] above, I find that a community service order and a probation order would be the appropriate sentence for count 4.
46. Section 22 of the **Criminal Justice Act 1999** allows the court to make an order for community service against a person above the age of 13 who has been found guilty of an offence punishable by imprisonment. DR is to do community services for 2 hours every Saturday for a duration of 3 months commencing from 11 January 2025.
47. Section 25 of the **Criminal Justice Act 1999** provides for the content of a community service order. I have considered Section 25 and make orders accordingly.
48. Section 7(1), 8(1) and 11(1) of the **Criminal Justice Act 1999** are relevant in relation to a probation order that would be made in the current circumstances. 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”.
49. 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 followings 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.

50. 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

⁸ [2003] NSWSC 347

“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.

51. The probation of 1 year is to commence upon the expiry of the community service order.

ORDERS

52. I make the following orders:

1. That no conviction is to be recorded against DR for counts 1, 2, 3, and 4.

Count 1

2. That DR is to pay a fine in the sum of \$200 within 28 days from 3 January 2025.

Count 2

3. That DR is to pay a fine in the sum of \$100 within 28 days from 3 January 2025.

Count 3

4. That DR’s driver’s licence is suspended for a period of 1 year with immediate effect.
5. That DR is to surrender his driver’s licence to the issuing agency by close of business today.
6. That the Deputy Registrar of the District Court is to inform the issuing agency of the suspension of DR’s driver’s licence, and is to follow up with the issuing agency with regard to the surrender of DR’s driver’s licence.
7. That DR is to pay a fine in the sum of \$1000 within 28 days from 3 January 2025.
8. That if DR fails to pay the fine then he shall be imprisoned for a term of 6 months or until the total fine is paid, whichever is earlier.
9. That DR is to provide a surety for the payment of the fines imposed on him for counts 1, 2 and 3 before the close of business today. The surety shall execute a bond accordingly.

Count 4

10. That a community service order is made against DR in the following terms:

⁹ Supreme Court Criminal Case No. 3 of 2024

- i. DR is to carry out two hours of community service every Saturday on a weekly basis commencing from 11 January 2025 for a period of 3 month.
- ii. DR is to report to the Chief Probation Officer on 8 January 2025 at 11 am.
- iii. The Chief Probation Officer shall give necessary directions on the community service to be undertaken.

11. That a probation order is made against DR 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. DR 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. DR 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. DR shall not reside at an address that is not approved by the Chief Probation Officer;
- iv. DR shall not continue in an employment, or continue to engage in an occupation that is not approved by the Chief Probation Officer;
- v. DR 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
- iv. DR shall keep the peace, be of good behaviour and commit no offence against the law.

12. That the parties are at liberty to appeal this sentence within 21 days from 3 January 2025.

Dated this 3 day of January 2025.


Resident Magistrate*
Vinay Sharma

