



IN THE SUPREME COURT OF NAURU

CRIMINAL DIVISION

CRIMINAL CASE 81 OF 2016

BETWEEN

THE REPUBLIC

AND

DEKAROA TEMITSI AND SHAWN KEMP MAAKI

Before: Khan ACJ

Date of Hearing: 21 November 2016

Date of Sentence: 9 December 2016

CATCHWORDS:

Defendants juveniles at the time of the offence – will be treated as juvenile offenders-notwithstanding that they were adults at the time of sentence.

APPEARANCES:

For the Prosecution: Mr D Toganivalu (DPP)

For the Defendants: Mr R Tagivakatini

SENTENCE

1. Both the defendants are jointly charged with one offence. The charge reads as follows:

Statement of Offence:

Breaking into a building and committing a crime: contrary to Section 421(1) of the Criminal Code 1899.

Particulars of offence:

Dekaroya Temitsi and Shawn Kemp Maaki on 29th March 2012 at Nauru did break and enter a shop namely Florro West Store of Chris Totoi Fakalofa and therein stole 3

tins of Hong Kong beans, 2 tins of Hormel Luncheon meat, 3 Black & Gold tins of pink salmon, 2 tins of braised steak and onion, 3 Black & Gold packets of cheese rings, 1 packet of cheese flavoured twisties, 1 packet Tim Tam, 2 alarm clocks, 1 Melody Bell, 1 Quartz Clock, 1 packet Apple juice, 2 hair combs, 3 pairs Kappa thongs, 3 pairs of Fangmei thongs, 2 pairs of thongs, 2 pair of Adidas runners, 21 basketballs and 1 box of Bonox food flavouring and an unknown number of soft drinks the property of Simon Keung.

2. The defendants were caught red handed and were arrested at the scene. They were taken to the police and charged for above the offence and were bailed to attend court.
3. They appeared in court on some occasions. I understand that a bench warrant was issued against them on 26 May 2013 as they failed to attend Court and another bench warrant was issued against them on 24 September 2013 and remained unexecuted until 4 April 2016 when this case was transferred by the District Court to this court under the provisions of Section 162 of the Criminal Procedure (Amendment) Act 2016.
4. After the case was transferred to this court there were further delays as the defendants were not summoned to attend court. When they were summoned to attend court they failed to do so and bench warrants were issued on 26 August 2016. The defendants voluntarily attended court on 27 October 2016 and they were bailed to attend court on 21 November 2016. On this day they pleaded guilty to the charge.
5. At the time the defendants were charged both were 15 years of age. Now both the defendants are 19 years old but I will have to sentence them as juvenile offenders rather than as adults.
6. Both defendants are now gainfully employed. The first defendant is employed as a community liaison officer earning \$230 per fortnight, whilst the second defendant is employed as a security officer in the Marine Department earning \$250 per fortnight.
7. Since the defendants were caught red handed all the property was recovered. This offence has been hanging over their heads for the last 4 years and to some extent they are to be blamed for the delay and there was also delay in the execution of bench warrant.

Sentencing Submissions

8. The submissions made by both counsels is that I should place the defendants on a probation order pursuant to Section 7 of the Criminal Justice Act 1999 which provides that where a person is convicted of an offence, and instead of sentencing him to imprisonment he could be placed on probation for a period of up to 3 years.
9. The defendants as I said earlier were juveniles at the time of the offence and I am of the view that it would be very harsh to impose a conviction on them. Although I am minded to give both the defendants an absolute discharge without a conviction but unfortunately the sentencing powers as set out in Section 19 of the Criminal Code 1899 does not allow me to do so, which in my view is very unfortunate. The Court should be given more discretion in sentencing of juvenile offenders. In our neighbouring countries like the Solomon Islands and Fiji, juvenile offenders are

usually given an absolute discharge and admonished so that there is no record against them. It is comforting to know that section 278 of the Crimes Act 2016 now allows the courts to dismiss the charge without recording a conviction. This offence was committed under the Criminal Code 1899 I will have to sentence them under that Act. Under Section 19(9) of the Criminal Code the defendants are convicted of the offence but are discharged upon the condition that they enter into their recognizance in the sum \$100.00 to keep the peace and be of good behaviour for a period of one month.

Dated this 9 day of December 2016



Mohammed Shafiullah Khan
Acting Chief Justice

