



**IN THE SUPREME COURT OF NAURU
AT YAREN
[CRIMINAL JURISDICTION]**

Criminal Case No. 10 of 2024

BETWEEN: THE REPUBLIC

PROSECUTION

JOSHUA HIRAM

ACCUSED

BEFORE: Keteca J

Date of Sentencing Submissions: 02nd June 2025

Date of Sentence: 16th June 2025

Catchwords: Public Nuisance: Contrary to Section 248 (1) (a) (b) and (2) (a) (i) or (v), Obstructing Public Official: Contrary to Section 242(a) and (b); and Causing Harm to Police Officer: Contrary to Section 77(a) (b) (c) and (d) of the Crimes Act 2016.

Appearances:

Counsel for the Prosecution: **M. Suifa'asia**

Counsel for the Accused: **J. Olsson**

SENTENCE

BACKGROUND

1. On 12th May 2025, Joshua Hiram was found guilty of the following offences under the Crimes Act 2016.:
 - i. Public Nuisance: Contrary to Section 248 (1) (a) (b) and (2) (a) (i) or (v),
 - ii. Obstructing Public Official: Contrary to Section 242(a) and (b); and
 - iii. Causing Harm to Police Officer: Contrary to Section 77(a) (b) (c) and (d).

THE LAW

2. 'Causing Harm to Police'

Section 77(a)(b)(c)(d) of the Crimes Act 2016 provides:

'A person commits an offence, if:

- (a) the person intentionally engages in conduct;*
- (b) the conduct causes harm to another person without the person's consent;*
- (c) the person intends to cause harm to the other because the person believes the other person is a police officer; and*
- (d) the other person is in fact a police officer.'*

Penalty;

- (i) If aggravating circumstances apply- life imprisonment of which at least 12 years imprisonment to be served without parole or probation; or
- (ii) In any other case- 20 years imprisonment, of which imprisonment term at least one third to be served without parole or probation.

3. 'Obstructing Public Officer'

Section 242(a) and (b) of the Crimes Act 2016 provides:

'A person commits an offence if:

- (a) The person obstructs, hinders, intimidates or resists another person in the exercise of the other person's functions as a public official; and*
- (b) The person believes the other person is a public official.'*

Penalty: 2 years imprisonment.

4. 'Public Nuisance'

Section 248(1)(a)(b) and (2) (a) (i) of the Crimes Act 2016 provides:

(1) A person commits an offence if:

- (a) The person engages in conduct in a public place or within view of a public place; and*
- (b) The conduct amounts to a public nuisance.*

Penalty: 6 months imprisonment.

PRE- SENTENCE REPORT

- 5. Joshua Hiram is 27 years old and is the youngest in a family of 7 siblings. He is single and lives in his late mother's residence with 2 of his sisters and some cousins. He used to earn \$399 a fortnight, being a labourer with RONPHOS and supports his single, unemployed sister who is soon to be a mother. Joshua supplements his income through fishing. Joshua's mother passed away when he was young. His father started another family elsewhere and was not involved in his upbringing.

6. Joshua is well liked in the community. He is known for his previous drinking habits where he exhibited violent behaviour and alcohol related blackouts. He has since cut down on his drinking and *intends to abstain completely from drinking alcohol*.
7. Joshua is remorseful and the Chief Probation Officer recommends a non- custodial sentence.

SUBMISSION BY THE PROSECUTION

8. Ms Suifa'asia submits as follows:

- Joshua has no previous convictions and he was in remand for **84 days**.
- *R v Keanu Amram* [2025] NRDC 43 of 2024- the accused pleaded guilty to 1 count of **Public Nuisance** contrary to section 248(1) (a) (b) and (2) (a) (i) (v) and 1 count of **Obstructing Public Official** contrary to section 242(a) (b) of the Crimes Act 2016. The accused was arrested whilst being involved in a brawl. At the police vehicle 'can cage', he resisted arrest, pushed a policeman, swung his fist that caused a minor bruise on the police officer's inner lip.
- The accused was sentenced as follows:
- Count 1- Conviction not recorded and Community service order (3 months)
- Count 2- Conviction not recorded and Community Service order (3 months)- concurrent to count 1.
- Probation order for 1 year, effective from date of expiry of the community service order.

9. Obstructing public Official

- *R v Lovani Jeremiah* [2024] NRSC 10- the 22-year-old accused was drinking opposite her house at a beach at Meneng. The police instructed them to move from that site. The accused refused to move saying she was a landowner. She was arrested. In the process, she swung her arm and hit the arresting officer's face. I imposed a fine of \$500 without recording a conviction.
- *Jonathan Gadeanang* [2023] NRSC Crim Appeal 1 of 2021- the accused was convicted and sentenced for- on a count of Obstructing a public official- 14 months imprisonment concurrent to 20 months imprisonment for theft and 14 months for escaping from lawful custody. When approached to be arrested for the theft of pig, the accused released his 2 Pitbull Terriers on the Police. He appealed his sentence. For obstructing a public official, the Supreme Court reduced his sentence of 14 months to 5 months imprisonment.
- *Kepae v Republic* [2023] NRSC Crim Appeal 2 of 2020. The accused pleaded guilty to 1 count of Obstructing a Public Official contrary to s. 242(a) (b) and count 1- Escape from lawful Custody contrary to s. 229 of the Crimes Act 2016. He was sentenced to 7 months imprisonment for count 1- and 12-months imprisonment for count 2. The prisoner appealed his sentence. The Supreme Court quashed both sentences and awarded 6 months imprisonment for count 1, concurrent to 9 months imprisonment for count 2.

10. Causing Harm to Police Officer

- *R v Craven Detabene* [2024] NRSC crim Case 06 of 2023. – The accused assaulted a police officer in a police cell. He was sentenced to 7 years 11 months imprisonment.
- *R Foreman Roland* [2023] NRSC Crim case 04 of 2022- The accused assaulted a policeman who was arresting him. His final sentence was 6 years and 25 days imprisonment.

11. Counsel submits that ‘offences against police officers have become prevalent. It depicts a ‘public belittling of authority.’

SUBMISSIONS BY THE DEFENCE

12. Ms Olsson submits the following sections of the Crimes Act 2016:

- Section 274 – the court may convert a term of imprisonment to a fine. This applies where an accused has been convicted and the only penalty stated for the offence is a term of imprisonment.
- Section 277-Kinds of Sentences;
- Section 278 -Purposes of sentencing;
- Section 279- general sentencing considerations;
- Section 280 -sentencing considerations for imprisonment;
- Section 281-sentencing considerations on fines;
- Section 282-Power to reduce penalties; and
- Section 7 of the Criminal Justice Act on Probation orders.

13. Public Nuisance-

- *R v Jeremiah* [2024] NRSC 11- outlined above.
- *R Dagagio* [2021] NRSC- this case dealt with an offence under the National Disaster Risk Management Act 2016 (Management and Minimisation of the impacts of Corona Virus (COVID-19)) Regulations SL No. 4 of 2020 and Rule 8 of the Rules for Designated Residence, order No. 2/2020 Gazette No. 82. **It is not relevant in the present case.**

14. Obstructing Public Official

- Counsel refers to *R v Jeremiah* [2024] NRSC 14 and *Kepae v R* [2023] NRSC 11. These are explained above.

15. Causing Harm to Police Officer

- *R v Batsiua* [2018] NRSC 46-(13th September 2018) this case as cited that was delivered on 13th September 2018 refers to the decision to permanently stay the proceedings and the payment of the defendant’s costs. The case was presided and judgment delivered by Justice Geoff Muecke and not Fatiaki CJ as submitted by Ms Olsson. **It is also not relevant in the present case.**
- *R v Cecil* [2018] NRSC 15- for Josh Kepae, on the offence of serious assault on a police officer, he was sentenced to 7 months imprisonment.

16. Personal circumstances of Joshua Hiram

- Joshua never knew his father. His mother passed away when he was 18 years old. He took on the role as head of the household- a defacto step-father to the 6 children of his sister who is single. He is the defacto 'father' to 15 people in their extended family.
- He left school at 12 years of age. He started work when he was 15 years old and supported his family.
- In the past 3 years he has worked regularly with RONPHOS. He lost his job because of this case.

17. Mitigation

- Joshua *may have mental health issues* as reflected by his previous consumption of alcohol to 'lose control of his senses.'
- *Since October 24, he has stopped drinking alcohol.* He is remorseful.
- He is willing to undertake an anger management programme.
- The court is to focus on his rehabilitation and to consider recording a conviction, pay a fine and to be placed on probation.

DISCUSSION

18. I have considered the helpful submissions from both Counsels and the following provisions of the Crimes Act 2016:

- i. Section 274- Conversion of term of imprisonment to fine;
- ii. Section 277- Kinds of sentences;
- iii. Section 278- Purposes of sentencing;
- iv. Section 279- General sentencing considerations;
- v. Section 280- Sentencing considerations- imprisonment;
- vi. Section 281- Sentencing considerations- fines; and
- vii. Section 282- Power to reduce penalties.

19. On the protection of the community and the promotion of rehabilitation under Section 278(c), (d) of the Crimes Act 2016, I refer to *Yardley v Betts* (1979) 22 SASR 108; 1 A Crim R 329 (CCA) where King CJ said (at 112; 333):

'The protection of the community is also contributed to by the successful rehabilitation of offenders. This aspect of sentencing should never be lost sight of and it assumes particular importance in the case of first offenders and others who have not developed settled criminal habits. If a sentence has the effect of turning an offender towards a criminal way of life, the protection of the community is to that extent impaired. If the sentence induces or assists an offender to avoid offending in future, the protection of the community is to that extent enhanced.'

20. On the deterrence factor under Section 278(b) of the same Act, I refer to *R v Radich* [1954] NZLR 86(CA) where the court said (at 87) :

“We should say at once that this last argument omits one of the main purposes of punishment, which is to protect the public from the commission of such crimes by making it clear to the offender and to other persons with similar impulses that, if they yield to them, they will meet with severe punishment. In all civilised countries, in all ages, that has been the main purpose of punishment, and it still continues so. The fact that punishment does not entirely prevent all similar crimes should not obscure the cogent fact that the fear of severe punishment does, and will, prevent the commission of many that would have been committed if it was thought that the offender could escape without punishment, or with only a light punishment.”

The court added:

“If a court is weakly merciful, and does not impose a sentence commensurate with the seriousness of the crime, it fails in its duty to see that the sentences are such as to operate as a powerful factor to prevent the commission of such offences. On the other hand, justice and humanity both require that the previous character and conduct, and probable future life and conduct of the individual offender, and the effect of the sentence on these, should also be given the most careful consideration, although this factor is necessarily subsidiary to the main considerations that determine the appropriate amount of punishment.”

21. On sentencing an accused for multiple offences, I refer to *DPP v Grabovac* [1981] 1 VR 664; (1997) 92 A Crim R 258 (CA) where Ormiston JA said (at 680; 275):

‘In general, a court should avoid imposing artificially inadequate sentences in order to accommodate the rules relating to cumulation. In other words, as the High Court said, where practicable when applying accepted rules of sentencing as to totality, proportionality and the like and in order to fashion an appropriate total effective head term in relation to a series of offences, it is preferable to achieve a satisfactory result by passing appropriate individual sentences wholly or partially concurrent, rather than by order or orders for the cumulation of unnecessarily reduced individual sentences.’

His Honour added:

‘Nevertheless, a rule of this kind can only be a precept or guideline to be applied as and when practicable. In particular, though concurrency is to be preferred, a degree of cumulation is to be ordered where sentences represent separate episodes or transactions which ought to be recognised, though at all times avoiding the imposition of a ‘crushing’ sentence.’

22. Should a conviction be recorded here? The accused is a first offender. Looking at the circumstances of the offending, he was on the footpath, a few meters from his residence when he was arrested. Joshua was heavily intoxicated. According to the evidence, he told the police that he was on his way to confront his football coach. As regards the conduct of the police in dealing with this drunken person, I refer to what Fatiaki CJ said on the Bail application in the case of **Republic v Jeremiah [2021] NRSC 21; Criminal Case 10 of 2021 (16 June 2021)**. At [15] and [16], his Honour said this:

15. ‘Secondly, police officers are trained in crowd control and in the use of physical force both offensively and defensively. They are also trained on how to deflate tensions and manage situations involving drunken people. None of these activities should necessarily or inevitably involve or end in arrests or charges. Police are also required to use some degree of force in arresting and restraining individuals and their duties often brings them into direct physical contact, both accidental and intentional, with members of the public. But such contact should be expected, accepted and even tolerated as a normal incident of a police officers’ duties.

16. At other times, police work is dangerous and even includes the risk of injury, however police officers are trained and expected to display a high level of patience and understanding of human behaviour and to possess a higher tolerance threshold for contact and pain than ordinary members of the public. To cite a readily obvious example, rugby or league players who don’t like or who avoid physical contact, should choose another sport.’

23. I agree with Fatiaki CJ. In the present case, to deflate the situation, the police could have directed Joshua Hiram to go home and sleep off his frustration with his football coach. Afterall, Joshua was just a few meters from his home. The police did not suggest this nor directed him to go home. If the police had done this, even with the assistance of his family members that were present, the tension may have been deflated and the situation managed to the extent that no arrest or charges were necessary. To paraphrase CJ Fatiaki’s remarks in the *Lovani Jeremiah case*, - ‘physical contact, with persons under the influence of alcohol both accidental and intentional, are to be expected in police work. It may even be tolerated ‘as a normal incident of police officers’ duties. Well trained police officers are expected ‘to display a high level of patience and understanding of human behaviour.’ I also agree that police officers are ‘to possess a higher tolerance threshold for contact and pain than ordinary members of the public.’ I opine that such understanding of human behaviour, high level of patience and higher tolerance threshold for contact and pain comes with the ‘turf’ when taking the ‘Oath or Declaration’ as a police officer. In addition, I say that when police officers are engaged locally or on active duties as international peacekeepers and even whilst dealing with armed elements, the resolution of a disagreement calmly without escalating a tense situation is a skill worth acquiring. Such skills also apply when dealing with persons totally inebriated with the amber liquid or the commonly consumed ‘AK 47.’

24. Joshua is not a habitual offender nor has he developed 'settled criminal habits.' He needs counselling and support. Considering the totality of the provisions of the Crimes Act 2016 on sentencing, case law and the probation officer's report, I choose not to record a conviction against the accused on Counts 1 & 2. Joshua Hiram is convicted on Count 3.

25. What then is the appropriate sentence here? As I've stated above, Joshua needs counselling and support. I note the absence of any affidavits in support for Joshua from community and church leaders. Such communal support is crucial in guiding the court as to the availability of alternatives and options when it comes to sentencing an offender.

CONCLUSION

26. Joshua Hiram is sentenced as follows:

- i. Count 1- Public Nuisance- without recording a conviction, Joshua Hiram is placed on probation for 3 years;
- ii. Count 2- Obstructing Public Official- without recording a conviction, you are placed on probation for 3 years, concurrent to Count 1.
- iii. Count 3- Causing Harm to Police Officer- convicted as charged and sentenced to 3 years imprisonment. This is suspended for 2 years.

27. Probation Order under Section 7 & 11 of Criminal Justice Act 1999:

- i. You are to report to the probation Officer, at the Supreme Court Registry by 10am Tuesday 17th June 2025;
- ii. You are to reside at an address approved by the probation officer;
- iii. You are to seek and engage in employment that is approved by the probation officer;
- iv. You are not to associate with persons specified in writing to you by the probation officer;
- v. You are to keep the peace, be of good behaviour and commit no offences within the next 3 years.
- vi. You are to abstain from consuming intoxicating liquor or drugs in the next 3 years.
- vii. You may apply to this Court for a variation of the above conditions.

DATED this 16th Day of June 2025


Kiniviliame T. Keteca
Judge

