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

Section 38(3), Supreme Court Act 2018

Criminal Appeal Case No. 02 of 2024

District Court Criminal Case No. 13 of 2024

BETWEEN: 1. RANDY DOGUAPE
2. TAGNER RATABWIY

APPELLANTS

THE REPUBLIC

RESPONDENTS

BEFORE: Keteca J

Date of Hearing: 13th June 2025
Date of Ruling: 04th July 2025

APPEARANCES:
Counsel for the Appellants: S. Hazelman

Counsel for the Respondents: M. Suifa'asia

JUDGMENT

BACKGROUND

1. The Appellants were convicted by the District Court with one count of unlawful possession of an illicit drug 1(g) contrary to section 6(a) of the Illicit Drugs Control Act 2004. They were sentenced as follows:

i. Fine of $1,500.00;
ii. A Community Service Order (4 months for the 1st Appellant, 3 months for the 2nd Appellant; and
iii. A 12 months' Probation Order – commencing after completion of the Community Service.

APPELLANT'S SUBMISSIONS

2. The grounds of appeal are:
   i. The Magistrate erred in law when he imposed a combination of a fine, community order and a probation order;
   ii. The sentence was manifestly harsh and excessive.

3. At the hearing of the appeal, Ms Hazelman abandoned ground 1 of the appeal.

4. On the 2nd ground, Counsel refers to 3 cases and submits:
   i. *R v Gadabu* [2024] NRSC 31; Criminal Appeal 02 of 2023- the accused was found in possession of 26.3 grams of cannabis. A sentence by the District Court of $3,000 fine without recording a conviction was confirmed by the Supreme Court. There is a big disparity of sentence here as the present appellants possessed only 1g. The $1500 fine is already excessive on its own. The imposition of community service and probation orders make the penalty excessive and inconsistent with previous cases. The Courts in Nauru have 'preferred rehabilitative rather than punitive penalties for minor cannabis offences.'
   ii. *Veen v The Queen* (No 2) (1988) 164 CLR 465- the High Court of Australia stressed that 'punishment must be proportionate to the gravity of the offence; and
   iii. *House v The King* (1936) 55 CLR 499 – the appellate court may intervene if the sentence is so excessive 'that it indicates an error of principle.'

RESPONDENT'S SUBMISSIONS

5. Ms Suifa'asia filed helpful submissions with a tabulated list of the sentencing trend for drugs related offences.

No.	Case Name	Possession of Illicit drugs contrary to section 6(a) Illicit Drugs Control Act	Penalty of 10 years imprisonment and fine of $50,000
1	*R Gadabu* [2024] NRSC 31 *R v Gadabu* [2023] NRDC 17	Possession of 16.3 g of cannabis	Sentence- no conviction and $3000 fine. Confirmed on appeal.

2	*R v Beaden & Cook* [2024] NRDC	1st Def/ Beaden- 1.4g of cannabis. 2nd Def/ Cook- 1.1g	Conviction entered. Fine of $1000; community and probation orders for both Defds.
3	*R v Kurt Osca* [2023] NRDC 44	Count 1- Common Assault Count 2- Possession of 5.1 g of cannabis	$1000 fine for common assault $1000 fine for possession plus 1-year imprisonment, no parole and suspended for 3 years.
4	*R v Jade- in heart Mwaredaga & Phoncho Dallas Agadio* [2023] NRDC 10	Possession of 0.8 g of cannabis	$1000 fine for each defendant in default imprisonment
5	*R v Kakiouea & Quadina* [2019] NRDC 38	Possession of 0.7 g	Kakiouea- conviction entered; fine of $300 in default 30 days imprisonment. Quadina- No conviction entered; fine $300 in default 30 days imprisonment
6	*R Kakiooued & Dabwido* [2019] NRDC 54	Possession of 1.8g of cannabis	No conviction entered; fine $300 in default 30 months imprisonment
7	*R v Pendergast* [2018] NRDC 85	Possession of 22.3g of anabolic steroids	Conviction entered; fine $1500
8	*R v Kaierua* [2018] NRDC 73	Possession of 2g of cannabis	No conviction; fine $300 in default 6 months imprisonment
9	*R v Safari* [2018] NRDC 14	Possession of 1g of cannabis	No conviction; fine of $300 in default 6 months imprisonment

6. Counsel correctly highlights that between 2018- 2019, the sentencing tariff for possession of illicit drugs (cannabis) was a fine of $300. It is noteworthy for the possession of 1-2g, the sentence was usually recording or not recording a conviction and a fine of the same amount. From 2023-2024, this increased to a fine of $1000.

7. Counsel submits that there is a big difference in awarding a fine or $300 -$1000 for the possession of 1g-2g of cannabis. The present case is heftier- Fine of $1500, community service and probation order for the possession of 1g of cannabis. Referring to *Breed v Pryce* (unreported decision of the Supreme Court of the Northern Territory, 25th June 1985) where Nader J observed:
'*If the magistrates and justices of peace, in the future exercise of their sentencing discretion, take the view that past penalties.... have been too light, the position should be corrected by an upward trend in penalties* ***rather than by an abrupt increase****. The former has the dual virtue of signalling to the community that penalties are moving to a level that reflects parliament's view of the seriousness of the offence, but at the same time no single sentence will be so disparate as to fairly warrant a sense of been unjustly treated.'*
Counsel concurs 'in part with the appellants that the sentence of $1500 for possession of 1g of cannabis **is manifestly excessive'** compared to other cases in the above table. Counsel further submits that $1500 for 1 g is 'an abrupt increase for the amount of the substance and **there is nothing exceptional in this present case to justify the increase in the fine**.'

8. Counsel concludes that the probation and community service orders promote rehabilitation of the offenders as provided in sections 278(d) and 279(n) of the *Crimes Act 2016.*

DISCUSSION

9. I have considered fully the submissions by Counsels. At the outset, I note that in their written submissions and at the hearing of the appeal, both Counsels did not canvas the reasons given by the Resident Magistrate in reaching his decision on sentencing the two accused persons. The Resident Magistrate delivered a well-considered decision. He traversed the relevant provisions of the Crimes Act 2016 on sentencing and various case authorities. For any appeal to the Supreme Court, Counsels should consider how the lower court reached the decision it gave and the reasons for such a decision. In doing so, it will become clearer to Counsels as to whether such a decision should be the subject of an appeal or not. It will also provide a better indicator for Counsels for the Respondent to fully oppose the appeal or concede or not to the grounds of appeal; in part or in toto.

10. In *Republic v Bill* [2024] NRSC 28; Criminal Case 1 of 2023 (11 October 2024), at paragraphs [27] and [28], I said:
'I am required to give reasons for the sentences that I pass. In WO (a child) v Western Australia (2005) 153 A Crim R 352 (WA CA), in a joint judgment, the court said: 'Every court sentencing an offender is required to give reasons for that sentence. The reasons need not be elaborate, but must in every case, be sufficient to enable the offender, and the public, to understand why that sentencing disposition was chosen and to preserve to the offender the right of appeal.

The court added:
'In a context where a sentence of imprisonment is a last resort (as it is both for children and for adults, although the principle has greater weight in respect of the former), those sentencing remarks will always be deficient if it is not possible to discern from them why a sentence of detention or imprisonment, as opposed to some other disposition, was selected.'

[28] In *R v Thompson* [2000] NSWCCA 309; (2000) 49 NSWLR 383; 115 A Crim R 104 (CCA), Spigelman CJ said (at 394-395; 113-114[42]-[44]):
'Sentencing judges are under an obligation to give reasons for their decisions. Remarks on sentence are no different in this respect from other judgments. This is a manifestation of the fundamental principle of common law that justice must not only be done but manifestly be seen to be done. The obligation of a court is to publish reasons for its decision, not merely to provide reasons to the parties."

11. As stated in paragraph [9] above, Counsels for the Appellants and the Respondents did not consider the reasons given by the Resident Magistrate for increasing the fine from $1000 to $1500. Counsel for the Respondent conceded that the fine of $1500 is manifestly excessive and that 'there is nothing exceptional in this present case to justify the increase in fine.'

12. Did the Resident Magistrate give any reason for increasing the fine? He did so. Very clearly. At paragraph [48], he said:
' In R v Beaden & Another, supra this court imposed a fine of $1000 where the defendants were in possession of 1.4 grams and 1.1 grams of cannabis. In the current circumstances a higher fine would be imposed on the 1st and 2nd defendants ***to reflect the court's condemnation of their conduct of encouraging and/ or allowing a juvenile to smoke cannabis with them.*** *The appropriate fine in the current circumstances would be $1500 against the first and 2nd defendants.'* (My emphasis)

13. The Resident Magistrate gave a very clear reason for the increase in the fine from $1000 to $1500. I agree with his reason and find that it is not 'an abrupt increase.' I disagree with Counsel for the Respondent that there is nothing exceptional in this present case to justify the increase in the fine.

14. Do the imposition of the community and probation service orders violate the principle of proportionality and make the total sentence manifestly harsh and excessive? Both the community service and probation orders are creatures of statute; under the Criminal Justice Act 1999. The preamble provides- 'An Act to provide new methods of dealing with offenders *liable to imprisonment* by a system of probation, community service and parole.' I agree with Counsel for the Respondent that these orders are open to the Resident Magistrate and 'serves the rehabilitation of the appellants.' I add that these alternatives to imprisonment are designed for offenders who have not developed settled criminal habits. Such offenders need supervision. These sentencing alternatives will hopefully prevent them from straying onto paths where they give in to criminal impulses and possible drug addiction.

15. I do not find the sentences imposed by the Resident Magistrate in this matter to be manifestly harsh and excessive.

CONCLUSION

16. The appeal is dismissed

DATED this 04th Day of July 2025

Kiniviliame T. Ketec

Judge