



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

**Criminal Case No. 09 of 2023**

**BETWEEN:** THE REPUBLIC

**PROSECUTION**

BANIS DENGEA

**ACCUSED**

**BEFORE:** Keteca J

**Sentencing Submissions:** 22<sup>nd</sup> August 2025

**Date of Sentence:** 10<sup>th</sup> October 2025

**Catchwords:** Driving Under Influence of Liquor: contrary to Section 69(1) and 2(c) and section 79(1) (a) (i) (ii) or (iii) of the Motor Traffic Act 2014; Risking harm with intent to commit offence or avoid apprehension contrary to section 84(1) (a) (b) (ii) (c) (d) of the Crimes Act 2016; Causing harm to police officer: contrary to section 77 (a) (b) (c) (d) and (ii) of the Crimes Act 2016.

**Appearances:**

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

Counsel for the Accused: **R. Tagivakatini**

**SENTENCE**

**BACKGROUND**

1. On 11<sup>th</sup> July 2025, the accused was found guilty of the following offences:
  - a. One count of Driving under Influence of Liquor, contrary to section 69(1) and 2(c) and section 79(1) (a) (i)(ii) or (iii) of the Motor Traffic Act 2014;
  - b. One count of Risking harm with intent to commit offence or avoid apprehension contrary to section 84(1) (a) (b) (ii) (c) (d) of the Crimes Act 2016 ( the Act); and
  - c. Two counts of Causing harm to police officer: contrary to section 77 (a) (b) (c) (d) and (ii) of the Act.

## MAXIMUM PENALTIES

2. The maximum penalties for these offences are:
  - i. **Section 69(2), Motor Traffic Act 2014- Driving Under the influence of liquor.**

The penalties are provided for under Section 79 of the same Act are:

    - (a) For a first offender:
      - (i) A mandatory suspension of his or her driver's licence for 6 months; and
      - (ii) Maximum fine of \$1000; or
      - (iii) Imprisonment for 6 months;
  - ii. **Section 84 of the Crimes Act 2016- Risking Harm with intent to commit offence or avoid apprehension- 8 years imprisonment.**
  - iii. **Section 77 of the Crimes Act 2016- Causing to Harm to a Police Officer-**
    - (a) If aggravating circumstances apply- *life imprisonment of which at least 12 years imprisonment to be served without parole or probation;*
    - (b) If any other case- *20 years imprisonment of which imprisonment term at least one third to be served, without parole or probation.*

## ANTECEDENT HISTORY

3. The accused has no previous conviction.

## PRE- SENTENCE REPORT

4. The accused is 48 years old. She is a divorcee with 8 children. The eldest is 25 years old and the youngest 12. She is a bus-driver, earning \$420/ fortnight. She resides with her elderly disabled mother, her younger brother, 5 of her children and 3 grandkids. The accused only drinks alcohol on special occasions. She is well liked in her community.
5. The accused's fortnightly salary and her disabled mother's disability funds support her family.
6. The accused has excellent chances of rehabilitation and if she 'were to be imprisoned' this would adversely affect her family and dependents.

## SUBMISSIONS BY THE PROSECUTION

7. The aggravating factors are the following:
  - i. The accused disregarded her safety and the safety of the police officers who had to swim out to save her;
  - ii. She tried to drown Police Officer Christender Adam and endangered her life.
8. Counsel considered Sections 277, 278, 279 and 280 of the Crimes Act 2016 on the purposes, principles and considerations for Sentencing.

9. **Driving under the influence of liquor-** Sections 69, 79 of the Motor Traffic Act 2014:

i. *Amy Spanner v Republic* [2023] NRSC Crim Appeal 4 of 2022- the District Court sentenced the accused to:

- 5 months imprisonment, suspended for 12 months. If the convict is found guilty of any offence connected to drinking and driving within the suspended period, the imprisonment will be executed;
- \$600 fine. In default to be imprisoned for a term not exceeding the lower (a) one day for every \$0.80 of the fine remaining unpaid or (b) 6 months, 40 days to pay fine.
- Driving licence suspended for 6 months.

The Supreme Court quashed the sentence to read:

- Suspension of the driver's licence for 6 months with effect from 29<sup>th</sup> September 2022;
  - Fine of \$900;
  - Allow the Appellant 30 days to pay the fine in default 6 months imprisonment.
- ii. *R v Titana Taumafa* [1982] NRDC 37- a motor cycle driver was charged for the following:

- Count 1- Driving under the influence of liquor- Contrary to Section 21(1) of the Motor Traffic Act 1937-73
- Count 2-Dangerous driving – Contrary to Section 19(1) of the same Act;
- Count 3- Speeding- Contrary to Section 28 (a) of the same Act.
- Count 4- Driving a Motor vehicle without a number plate-Contrary to Section 23(1) (c) of the same Act.
- The driver was stopped after a police pursuit. He was sentenced as follows:
  - i. Count 1- 3 months imprisonment;
  - ii. Count 2- 3 months imprisonment
  - iii. Count 3- 1-month imprisonment;
  - iv. Fine \$25; in default 15 days imprisonment

10. **Risking Harm with Intent to commit offence or avoid apprehension-** according to Counsel, there are no case laws on this offence.

11. **Causing Harm to Police Officer**

i. *R v Joshua Hiram* [2024] NRSC 10 of 2024- the accused was charged and found guilty of the following offences:

- Count 1- Public Nuisance- Contrary to Section 248(1) of the Crimes Act 2016;
- Count 2- Obstructing Public Official- Contrary to Section 242(a)(b) of the same Act;
- Causing Harm to Police Officer- Contrary to Section 77 of the same Act.

- The drunk accused resisted arrest, obstructed and assaulted a police officer. He was sentenced to:
  - i. Count 1- Probation for 3 years;
  - ii. Count 2- Probation for 3 years concurrent to Count 1;
  - iii. Count 3 Convicted and sentenced to 3 years imprisonment, suspended for 2 years.
- ii. ***R Craven Detabene*** [2024] NRSC Crim Case 06 of 2023- The accused was found guilty of the following:
  - Count 1- Drinking- Contrary to Section 17 of the Naoero Roads Act 2017;
  - Count 2- Causing Harm to Police Officer- Contrary to Section 77 of the Crimes Act 2016.
  - The accused had been drinking alcohol while traveling in a vehicle. He was arrested and taken to the police Station. He assaulted a policeman in a police cell. He was sentenced to:
    - a. Count 1- 6 months imprisonment; concurrent to
    - b. Count 2- 95 months imprisonment- 7 years 11 months imprisonment.
- iii. ***R v Foreman Roland*** [ 2023] NRSC Crim Case 04 of 2022
  - The accused was convicted of causing harm to a police officer. He caused a disturbance and damaged property in his mother's house. When arrested by the police, he resisted and fled. The police apprehended him again. Ha assaulted a police officer in the process.
  - He was sentenced to 6 years and 25 days imprisonment.

12. Counsel concludes that the appropriate sentence here is to consider a balance between deterrence and rehabilitation.

#### **SUBMISSIONS FOR THE ACCUSED**

13. Counsel considered Sections 277 & 278, of the Crimes Act 2016 on kinds and purposes of sentencing.

14. **Driving Under the Influence of Liquor- Sections 69(1)(2)(c) and 79 (1) (a) (i)(ii) or (iii) of the Motor Traffic Act 2014.**

- ***Spanner v R*** [2023] NRSC 16; Criminal Case 4 of 2022 (26 May 2023)- this case is outlined in paragraph [9] (i) above.

**15. Risking harm with Intent to Commit Offence or Avoid Apprehension- Section 84 (1) (a) (b), (ii) (c) (d) of the Crimes Act 2016.- No sentencing tariffs available.**

- A similar offence of Risking Serious Harm contrary to Section 81(a)(b)(c) of the Crimes Act 2016 was dealt with by the District Court in *R v Kudaman Namaduk* (Cr No. 33 of 2018). The accused was drunk. He damaged property at his home. His father called the police. When the police arrived, the accused was sleeping outside the house. The police officers woke him up. He became aggressive and punched one of the police officers. He bit the arm of another. The police officers retreated to their police vehicle. Their superior officer instructed them to return to the house. The accused armed himself with two choppers and threw one at the police vehicle. He smashed the police vehicle with the second chopper. He threatened to kill the officers if they did not leave his house. Later in the day, in full combat gear, the police arrested the accused. The then Resident Magistrate Lomaloma sentenced him as follows:
  - i. Count 1- Risking Serious Harm- 2 years imprisonment;
  - ii. Count 2- Threatening to Cause Serious Harm to Public Official- 2 years imprisonment (Concurrent to Count 1)
  - iii. Count 3- Common Assault- 3 months imprisonment;
  - iv. Count 4- Common Assault- 3 months imprisonment.
  - v. Total sentence of 2 years, 3 months' imprisonment.

**16. Causing Harm to Police Officer- Section 77 (a)(b) (c) (d) and (ii) of the Crimes Act 2016.** Counsel relied on the same cases submitted by the State and notes that **Foreman Roland** was sentenced to 6 years & 25 days whilst **Hiram** was sentenced to 3 years, suspended for 2 years.

**17. Counsel highlights the following:**

- There was evidence of police brutality against the accused meted out by the most senior officer at the scene.
- The junior police officers went beyond their call of duty to save the accused whilst the 'senior officers showcased blatant abuse of authority.' PW10, Junior Akiwibo, after being silenced for 2 years, showed his disgust whilst giving evidence at the actions of Sergeant Marvin Tokaibure. (*I add here, as given in the evidence, it was because of this incident that PW10 Junior Akibwib resigned from the Nauru Police Force*)
- On Risking Harm to Avoid Apprehension, commending PW1 and PW10, 'it is by the grace of God that all three survived the rough seas..' Counsel submits that the *Kudaman Namaduk* case be considered and the knife wielding accused who threatened to kill the police officers in that case be contrasted with the conduct of **Banis** in this case. Counsel adds that **Banis** attempted to escape. She did not threaten (to kill) the officers.
- At paragraph [26] of his submissions, on the Driving under the Influence of liquor (not Drinking under the Influence) it is mandatory to suspend her licence. Her family situation supports the suspension of any imprisonment term here.

- Counsel submits that the incident was regrettable and unavoidable. (I think he meant avoidable). The accused and the junior officers were let down by the senior officers. The junior officers ‘nearly paid with their lives.’
- There was evidence of police brutality against Banis, at the scene, by the most senior police officer, PW7 Sergeant Marvin Tokaibure. He should be admonished.
- The junior police officers, ‘admirably went beyond the call of duty to save Banis.
- Counsel concludes that the totality of the circumstances surrounding this case, a sentence similar to the **Hiram case** should be considered by the Court.

## CONSIDERATION

18. I have considered fully the helpful submissions by both Counsels. I have also considered the following provisions of the Crimes Act 2016:

- Section 277- Kinds of sentences;
- Section 278- Purposes of sentencing;
- Section 279- General sentencing considerations;
- Section 280- Sentencing considerations- imprisonment;
- Section 281- Sentencing considerations- fines; and
- Section 282- Power to reduce penalties.

19. I consider first some general principles in sentencing. In **R v Rimmington** [2006] 1 AC 459; [2006] 3 WLR 982 sub nom **R v Goldstein** [2006] 2 All ER 257 (HL) Lord Bingham of Cornhill said at (at 482; 1002; 278[33]):

*‘There are two guiding principles; no one should be punished under a law unless it is sufficiently clear and certain to enable him to know what conduct is forbidden before he does it and no one should be punished for any act which was not clearly and ascertainably punishable when the act was done.’*

20. In **R v Serra** (1997) 92 A Crim R 511 (NT CCA) in a joint judgment, the court said (at 525)”

*‘[A] sentence should be the minimum required; the general principle in sentencing is that if less will do, more is superfluous.’*

21. On ‘Individual Justice’ (1995) 69 ALJ 421 at 424, Gleeson CJ said:

*‘the punishment is supposed to fit not only the crime, but also the criminal.’*

22. I remind myself that I must give reasons for the sentence I will pass- **WO (a child) v Western Australia** (2005) 153 A Crim R 352 (WA CA) (at 354[7] and **R v Thomson** (2000) 49 NSWLR 383; 115 A Crim R 104 (CCA) per Spigelman CJ at 394-395; 113-114 [42]-[44]. I referred to the above judgments **in Republic v Randolph** [2025] NRSC 32; Criminal Case 09 of 2024 (17 July 2025).

23. As part of my reasons, I refer to Section 278(b) of the Act that a purpose of a sentence is to ‘prevent crime by deterring the offender and other people from committing similar offences.’ In **R v Radich** [1954] NZLR 86 (CA) 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 civilized 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.”*

24. Additionally, Section 278(c) of the Act provides – ‘to protect the community from the offender.’ Although the accused is a first offender and there is no report of her propensity to proffer violence to others, the ‘protection of the community, needs to be considered. In **Veen v The Queen** (1979) 143 CLR 458; 23 ALR 281 acobs J said (at 478; 296):

*‘It needs to be emphasised that the protection of the public does not alone justify increase in the length of sentence.’*

25. Section 278 (c) (to protect the community from the offender) and Section 278 (d) (to promote the rehabilitation of the offender) may be considered together. In **Yardley v Betts** (1979) 22 SASR 108; 1 A crim R 329 (CCA) said (at 112; 333):

*‘The protection of the community is also contributed to by the successful rehabilitation of the offenders. This aspect of sentencing should never be lost sight of and it assumes particular importance in the case of first offenders and other 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 the future, the protection of the community is to that extent enhanced.'*

26. Section 279 (2)(b) of the Act provides that I must consider the 'nature and circumstances of the offence.' In paragraph [7(a)] of my judgment, PW1 PC Gianni Kameatu testified that he noticed that the accused appeared drunk. He told her that she cannot drive her motorbike as she was drunk. The accused was swaying and staggering. He told her to accompany him to the police vehicle. She complied. He also told her that she will rest in the police vehicle and the police will drive her home. It was PW2 PC Deniko Scotty that informed the accused that she will be arrested for driving under the influence of liquor. According to the evidence, when the most senior officer, PW7 Sergeant Marvin Tokaibure arrived on the scene, he 'asked for Banis.' According to PW1 PC Gianni Kameatu, it was when the accused heard this, that she ran away into the sea.
27. At paragraph [20] of my judgment, I noted that 'PW10 Junior Akibwib resigned from the Nauru Police Force because of this case.' In the same paragraph [20], he said- 'I saw it happen.' PW7 kept shouting at her and hit the accused with his elbow. In his words- 'That night, the police were unprofessional.' PW7 picked the accused up and threw her on to the dry ground. PW7 grabbed her and threw her into the police cab. He kicked her and punched her too. At the police station, PW7 told them to keep their mouth shut as it will ruin the Nauru Police Force. He is related to the accused through her mother. In his words- 'I didn't complain about what I saw. Something bad will happen to us if we talk- that's why we kept our mouth shut for 2 years.'
28. Section 279(2) (m) of the Act provides that I consider the character, antecedents, age, means and physical or mental condition of the accused. Aspects of these are noted in paragraphs [3]- [6] above. She is a first offender and not prone to violent impulses.
29. Section 279(2) (o) of the Act refers to 'the probable effect that any sentence or other order under consideration would have on any of the person's (accused) family or dependants. From the Pre- Sentence Report, the accused's fortnightly salary of \$420 as a bus driver, supplements her disabled mother's allowances to support her family. This family comprises her elderly disabled mother, her younger brother, 5 of her children and 3 grandchildren; a total of 11 persons.
30. I am also required to consider Section 279(2) (d)- any injury, loss or damage resulting from the offence. PW3 PC Christender Adam bore the brunt of this unfortunate altercation. The accused punched her and tried to drown her. She was also kicked by the accused. As a result, she swallowed seawater. The summary in the medical report for PC Christender states- "The injuries, although not visible, are considered non- life threatening. Advised to rest." Appendix 2 of the medical report, diagram of the top of her head shows- 'Slight tender- no swelling, no bruises, no redness' on PW3's head.

31. The second victim, -Police Reserve Officer Kum-on Dake was kicked in the groin area. He was in pain and fell into the sea. He did not seek any medical checks.
32. Having considered all the above, should I enter a conviction against the accused on all Counts? For Count 1, as a first offender, a conviction will result in the mandatory suspension of her driver's licence for 6 months. This will be coupled with a possible maximum fine of \$1000 or imprisonment for 6 months. The suspension of the accused's driver's licence will result in her losing her source of livelihood as a bus driver. Should the court consider the possible hardships to the accused's family? In **R v Tilley** (1991) 53 A Crim R 1 (Qld CA) Thomas J said (at 4):  
*'An offender cannot shield himself under the hardship he or she creates for others, and courts must not shirk their duty by giving undue weight to personal or sentimental factors. The public, which includes many people who struggle to bring up their children with moral standards, would be poorly served if the courts gave in to the temptation.'*
33. In **R v Yates** (1998) 99 A Crim R 483 (Vic CA) Charles JA said (at 486):  
*'It is a well-established principle that a sentencing court should have no regard to the impact which a sentence of imprisonment will have upon members of the prisoner's family; see the case of Ingham (1974) quoted in Thomas, Current Sentencing Practice (Sweet & Maxwell, loose-leaf service)' para C4.2(a); Lynch (unreported, Court of Appeal. This is not an absolute rule and will, .... be departed from in exceptional circumstances, particularly when imprisonment will result in children being left to fend for themselves as best they can without parental supervision or support; Boyle (1987) 34 A Crim R 202, per Butt CJ at 205.*
34. Considering all the above, **I enter convictions against the accused on all counts.**

## CONCLUSION

35. Banis Dengea, you are sentenced as follows:
- i. Count 1: Your driver's licence is suspended for 6 months and a Fine of \$200 to be paid within 60 days, in default 2 months imprisonment.;
  - ii. Count 2: There are no tariffs for this offence. The circumstances and the nature of the offending here are quite serious. Three people could have lost their lives from your conduct. For this, you are sentenced to 2 years imprisonment;
  - iii. Count 5- 3 years imprisonment;
  - iv. Count 6- 3 years imprisonment.
  - v. The imprisonment terms run concurrently.
36. Should the imprisonment terms in Counts 2, 5 & 6 be immediate or should I consider suspending them? Counsel for the accused submits that the totality of the offending

and the conduct of the police in this case justify a suspended sentence as in the **Joshua Hiram case**. In addition to the submissions of Mr Tagivakatini, I also consider the following cases as relevant here:

- i. In **R v Ford** (2008) 100 SASR 94; A Crim R 398 (CCA) Gray J, with whom the others agreed, said (at [51]-[52]):

*'A sentencing judge will only turn to consider suspending a sentence of imprisonment after first determining that imprisonment is the appropriate penalty. Having decided that imprisonment is the appropriate penalty, and having decided the head sentence and non-parole period to impose, a sentencing judge may then suspend that sentence if he or she considers that good reason exists to do so. Whilst 'good reason' will usually be derived from circumstances personal to the offender, there is no limitation placed on what may amount to a good reason. There must be something about the personal circumstances of the applicant or the offence that would render it inappropriate to imprison the applicant in the circumstances where imprisonment is the appropriate penalty. It is not a matter of finding something special or exceptional, but rather a matter of weighing all relevant factors.'*

- ii. In **Dinsdale v The Queen** (2000) 202 CLR 321; 175 ALR 315; 115 A Crim R 558 Kirby J referred to the cases and said (at 347; 335; 579 [81]):

*'There is a line of authority in Australian courts that suggests that the primary consideration will be the effect such an order will have on rehabilitation of the offender, which will achieve the protection of the community which the sentence of imprisonment itself is designed to attain. But most such statements are qualified by judicial recognition that other factors may be taken into account. The point is therefore largely one of emphasis.'*

At [83]:

*'On the other hand, other judges have regarded it as impermissible effectively to confine consideration of whether to exercise the discretion to the question of rehabilitation of the offender. According to this second view, there is no warrant for holding that the decision on suspension should depend largely on the prospects of rehabilitation, or contrition, or any other factor.' Such considerations are accepted as relevant. But they are not determinative. They do not excuse those with the responsibility of sentencing of the obligation to consider all of the circumstances.'*

- iii. **DPP v Buhagiar and Heathcote** [1998] 4 VR 540 (CA) Batt and Buchanan (at 547) is noteworthy. They said:

*‘[T]here are cases where a judge may reach the view that suspension of a sentence is appropriate, not because it would be less unpleasant for the offender, but because it may be productive of reformation, which offers the greatest protection to society: R v Davey (1980) 50 FLR 57; 2 A Crim 254 at FLR 65; A Crim R 260-1. A suspended sentence of imprisonment is not an unconditional release or a mere exercise in leniency. Rather it is an order made in the community’s interest and generally designed to prevent re-offending: at FLR 67; A Crim R 262. In deciding whether to suspend in whole or in part a term of imprisonment a judge is deciding whether in all the circumstances, the offender should have the benefit of a special opportunity for reform, to rebuild his own life, or to make some recompense for the wrong done, or should have the benefit of the mercy to which King CJ referred in R v Osenkowski (1982) 30 ASR212 at 212-13, or for some other sufficient reason should have this particular avenue open to him, provided the conditions of the suspension are observed: R v P (1992) 39 FCR 276 at 285, a decision of the Full Court of the Federal Court. (The three cases cited in this paragraph all concerned Crown appeals.)*

37. Noting the above cases in paragraph [36] above I also consider the following factors as relevant here:

- i. The accused is a divorcee with 8 children. She currently resides at their family home with her elderly disabled mother (a stroke victim), her younger brother, 5 of her children and 3 grandchildren.
- ii. If she is sent to prison today, it would be deleterious and detrimental to herself and her family.
- iii. She is a first offender, and her prospects for rehabilitation are good.
- iv. She was the victim of police brutality.
- v. The consequences of her convictions in this case will form part of her criminal record.

38. The following cases are also noteworthy:

- i. **R v JCE** (2000) 120 A Crim R 18 (NSW CCA) Fitzgerald JA, with whom the others agreed, said (at 22 [25]):- ‘*A suspended sentence of imprisonment is punishment*’;
- ii. **R v O’Keefe** [1969] 2 QB 29; [1969] 1 ALL ER 426 Lord Parker said (at 32;94): - *A suspended sentence is a sentence of imprisonment. Further, whether the sentence comes into effect or not, it ranks as a conviction, unlike the case where a probation order is made, or a conditional discharge is given.*’

iii. *Elliot v Harris* (No 2) ( 1976) 13 SASR 516 ( CCA) Bray CJ said ( at 527):- ‘  
*So far from being no punishment at all, a suspended sentence is a sentence to imprisonment with all the consequences such a sentence involves on the defendant’s record and his future, and it is one which can be called automatically into effect on the slightest breach of the terms of the bond during its currency.*’

39. Considering all the above, the concurrent imprisonment terms are suspended for 3 years.

40. Finally, I recommend to the Commissioner of Police that PW1 – PC Gianni Kameatu and PW10, former PC Junior Akibwib be commended for their bravery for conduct beyond the call of duty, when despite the impending peril and risks to their own lives, they swam through very rough seas to save Banis Dengea who was in imminent danger of drowning.

DATED this 10<sup>th</sup> Day of October, 2025

  
Kiniviliame T. Keteca  
Judge

