



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

Criminal Case No. 8 of 2025

BETWEEN: THE REPUBLIC

PROSECUTION

AND:

ALEXAIY WAIDABU

ACCUSED

BEFORE: Keteca J

Date of Hearing: 10th March 2026

Date of Sentence: 01st April 2026

Catchwords: Intentionally Causing Serious Harm: Contrary to Section 71(a)(b) & (c) of Crimes Act 2016 (the Act).

Appearances:

Counsel for the Prosecution: **W. Deiye**

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

SENTENCE

BACKGROUND

1. On 10th March 2026, the accused pleaded guilty to one count of Intentionally Causing Serious Harm: Contrary to Section 71(a)(b) & (c) of the Act. He agreed with the summary of facts which relate that the accused was part of a drinking group on the morning of 23rd May 2021. He had an argument with the complainant. The complainant pushed him. The accused fell to the ground. The accused left and came back with a knife. He stabbed the victim on his shoulder from the back. The victim was bleeding and he was taken to Ron Hospital. The victim was not admitted. He was discharged with *'pain relief and antibiotics.'*

2. The delay in the charging of the accused was because he was overseas. The medical report notes that the wound on his shoulder measured approximately 2 cm in length and 3-4cm in depth. The professional opinion on D (14) notes- *“stab wound- initially bleeding, but controlled under pressure/ compress dressing. At D (16)- Patient discharged with pain relief and antibiotics.”*
3. Considering the facts of the case, I found that the element of ‘*serious harm*’ under Section 71 (a)(b) & (c) is not satisfied.
4. I found the accused guilty of the lesser charge of ‘*Intentionally Causing Harm*’: Contrary to Section 74 of the Act.

Victim Impact Statement

5. The victim is 39 years old and lives with his 60-year-old mother at Anetan district. He did not expect the accused to stab him. He did not feel much pain as he blacked out. He stays away from people who fight or argue.

Pre-Sentence Report

6. The accused is 31 years old and single. He is on leave from work as a captain of the Capelle & Partner fishing charter boat. He has carpentry skills having contributed to the building of six houses on the island. A keen fisherman, he has won many fishing competitions. He is usually called upon to provide fish for funerals.
7. The accused has no previous convictions. He is remorseful. He acknowledges his wrongdoing and thus his guilty plea. He seeks the mercy of the court and *‘is genuinely committed to making positive changes in his life.’*
8. Though not married with no children, the accused has *‘significant responsibility within his family’* and cultural obligations. *‘A custodial sentence will cause substantial hardship to his family, disrupt the completion of his new home and remove a key provider for both households. It will also negatively impact the wider community who depend on him for cultural and communal duties.’*
9. The Chief Probation Officer recommends a non- custodial sentence.

Submissions by the State

10. Counsel submits that the aggravating feature of this offending was that *‘the accused used a knife and went behind the victim and stabbed on the shoulder.’*
11. The mitigating features are threefold. The accused is a first offender. The accused pleaded guilty and the delay in the prosecution of this case.

12. On specific deterrence, Counsel submits that ‘*targeted deterrence is necessary in this matter*’ and a ‘*stern message that those who intentionally harm others will receive custodial sentences.*’

13. Counsel referred to the following cases:

- i. *Adun v R [2022] NRCA 6; Criminal Appeal 2 of 2019 (15th September 2022)*. The appellant, a member of parliament and Assistant Minister had assaulted a handyman, refugee. He was acquitted at the District Court. At the Supreme Court, the appellant was convicted and sentenced to 13 months imprisonment. The Court of Appeal dismissed the appeal and affirmed the sentence awarded by the Supreme Court.
- ii. *R v Kepae [2022] NRSC 4 & Amram v R [2017] NRSC 89; Criminal Appeal 18 of 2017* is outlined below.

14. On the delay of the prosecution, Counsel refers to *R v Deidenang [2018] NRDC 3; Criminal Case 66 of 2018 (16th August 2018)* where ‘*it took 3 years and 1 month after the accused admitted the offence before his charge was filed on 23rd July 2018. The accused pleaded guilty to ‘one count of assault occasioning bodily harm.’ This was under Section 339 of the old Criminal Code 1899. He was sentenced to 6 months imprisonment. It was suspended for 12 months. It is noteworthy that the prosecution has not explained why it took more than 4 years for the Information to be filed in the present case.*

15. Counsel concludes that a sentence must convey that this type of offending will not be tolerated.

Submissions for the Accused

16. In mitigation, Counsel submits that the plea of guilty has saved the Court’s time and resources. The accused is remorseful. He acknowledges that what he did was wrong and accepts responsibility for his conduct. He cooperated with the police investigations and admitted the charge when interviewed. The offence occurred on 23rd May 2021 and there is no explanation by the prosecution as to why it took ‘*4 years to file the information.*’

17. Counsel refers to the following cases:

- i. *R v Kepae [2022] NRSC 4; Criminal Case 19 of 2020 (21st January 2022)*. *R v Kepae [2022] NRSC 4*. The accused and the victim were involved in a fight. They were 22 years old. The victim suffered a broken jaw and lost a wisdom tooth. The accused was charged with one count of attempted murder and one count of intentionally causing serious harm contrary to ss. 55A and 71 of the Crimes Act 2016. The accused was acquitted on Count 1 and convicted on Count 2- Intentionally causing harm. The accused was sentenced to 30 months imprisonment. Of the 30 months, 50% of the sentence was suspended for 3 years. Of the remaining 15 months, 7 months were deducted for time spent in custody and the accused was to serve a term of 8 months.

- ii. *Amram v R [2017] NRSC 89; Criminal Appeal 18 of 2017 (29th September 2017)*. The accused pleaded guilty to Intentionally Causing Harm under Section 74 of the Act. The accused assaulted a community worker who had called the police to disperse a group of drinking fellows. The accused was sentenced by the District Court to 8 months imprisonment. The accused appealed. Khan J upheld the sentence of 8 months imprisonment.
- iii. *R v Daniel [2025] NRSC 7; Criminal Case 13 of 2024 (18th March 2025)*. The accused who was a known mental patient at RON hospital pleaded guilty to a charge of Intentionally Causing Serious Harm: Contrary to Section 71(a)(b)(c) (ii) of the Crimes Act 2016. The accused used a kitchen knife and wounded the neck of the victim. A Forensic Mental Health Assessment Report of the accused on 02nd October 24 noted that the accused was fit to plead in court and participate in any legal proceedings and that he was being monitored on his regular medication- long acting anti- psychotic injection and oral anti-epileptic meds. Considering the accused's '*impaired mental functioning*,' the Court sentenced him to 12 months imprisonment, suspended for 2 years.

Character Refences

18. The Hon. Marcus Stephen, MP, writing as the President, Nauru Olympics Committee, has known the accused since he was a young boy and '*attests to his strong character, integrity and sense of responsibility.*' I note that there is no mention by the referee of the case that the accused has pleaded guilty to nor any mention of the recommended sentence.
19. The accused's older sister, Anuska Cook states that '*One of the most admirable qualities of my brother is his ability to face challenges in life independently with courage and resilience.*' She is fully aware of the offence committed by her brother. It is uncharacteristic of his brother. She has spoken to her brother and she has found that he deeply regrets and is remorseful for what he did. It is a life lesson for her brother. She does not '*condone any violence nor believes that any crime should go unpunished.*' She believes in second chances and prays that her brother be given a second chance.
20. Counsel pleads that a *suspended sentence* will be appropriate here.

CONSIDERATION

Maximum Penalty

21. The maximum penalty for a Section 74 (a)(b)(c) offence is 9 years imprisonment (if aggravating circumstances apply) and in any other case, 7 years imprisonment.
22. Aggravating circumstances is provided for under Section 79 of the Act and it includes cases where the defendant is armed with an offensive weapon. In the present case, the accused used a knife to stab the victim. A knife is an offensive weapon under Section 8 of the Act.

23. I firstly consider the purposes of sentencing under Section 278 of the Act. They are:
- 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.
24. Having also considered Sections 277 & 278 and other provisions on sentencing in the Act and the case law discussed above, I record a conviction against the accused.
25. What is the relevant sentence in cases of assaults that cause harm to victims? In *Yardley v Betts* (1979) [1] King CJ said this about sentences for assaults: -
- 'Assaults vary very greatly in seriousness. Some result in injury to the victim and some do not. Some are committed under provocation in the heat of the moment and others are wanton and premeditated attempts to impose the offender's will on the victim by force. Some are mere man to man altercations and others are terrifying and cowardly examples of mass violence. Many other variations could be mentioned. The offenders vary from the normally law-abiding person who is caught up in a situation of stress which erupts into violence, to the habitual bully and thug. In some cases, a term of imprisonment may enhance rather than diminish the prospects of the offender avoiding crime in the future. In other cases, a term of imprisonment may turn a usefully employed person into a frustrated unemployed person, may deprive the offender of the best and most stabilising influences in his life by disrupting a good family situation, and may increase a propensity to crime by placing him in the company of criminals. The need for a deterrent punishment will vary according to the circumstances of the offence.*
- He added:
- 'A consideration of these factors leads to the conclusion that cases of assault require individual assessment and treatment. In my opinion there can be no presumption one way or the other as to **whether imprisonment is the appropriate way of dealing with any particular case.** A judicial policy which were to embody such a presumption in respect of assaults generally, or assaults which could be characterised as "serious," or assaults where "some injury is caused to the victim," would not in my view be justified. It is worth pointing out that the degree of injury suffered by the victim is not in every case a satisfactory measure of the gravity of the offence or the culpability of the offender.'*
26. Section 279 (2) (a) makes it mandatory that I consider the nature and circumstances of the offence. The present case is not a heat of the moment *contretemps* or squabble. It started with the accused confronting the victim about his accusation over a stolen phone in 2019. The accused punched the victim. The victim pushed the accused who fell to the ground. The accused told the victim to wait and left the place. He came back with a knife and he stabbed the victim's shoulder from the back.

27. On Section 279 (2) (d), the victim suffered a stab wound to his shoulder. There is premeditation here.
28. From the case law considered above, the sentences have been terms of imprisonment. Should I award a similar sentence here? Section 280 of the Act provides:
 ‘A sentence of imprisonment may be imposed **only** if:
 (a) In the opinion of the court:
 (i) the person has shown a tendency to violence towards other people;
 (ii) the person is likely to commit a serious offence if allowed to go at large;
 (iii) the person has previously been convicted of an offence punishable by imprisonment;
 (iv) any other sentence would be inappropriate having regard to the gravity or circumstances of the offence; or
 (v) the protection of the community requires it; or
 (b) A sentence of imprisonment is necessary to give proper effect to Sections 278 and 279.’
29. On whether there was an alternative to imprisonment was considered in *R v Palliaer* (1983) 35 SASR 569, Mitchell ACJ said (at 571):
‘The proper approach was to decide first whether there was an appropriate alternative to imposing a sentence of imprisonment; if the answer to that is in the negative then to decide what was the proper term of imprisonment to be imposed; and then and only then, to decide whether it would be appropriate to suspend the term of imprisonment.’
30. In this case, noting the use of a knife, an offensive weapon, to stab the victim, the case laws on this type of offending, and Section 280(b) that ‘*a sentence of imprisonment is necessary to give proper effect to Sections 278 and 279,*’ I find that a term of imprisonment is appropriate here. I sentence the accused to 3 years imprisonment.
31. Should the imprisonment term be immediate? In *R v Sumich Detenamo Criminal Case No. 5 of 2023* (20th March 2026) I considered the following cases:
 ‘i. In *R v Ford* [2008] SASC 46; (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] HCA 54; (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. *PP 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] FCA 134; (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 Osenkwoski (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] FCA 626; (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.)

- iv. *R v JCE [2000] NSWCCA 498; (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';

- v. *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.'


- vi. *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.'*

32. I note that the accused here is normally a law-abiding person. His violent impulse on the day is described by his sister as '*uncharacteristic of his brother.*' He is not a habitual bully or thug with aggressive habits.

33. Taking all the above into account, I find that the *accused should have the benefit of a special opportunity for reform, to rebuild his own life, or to make some recompense for the wrong done*, and that the greatest protection to society is a reformed person that is given the second chance to learn from his mistakes and to contribute positively to the society he is a member of.

34. Alexaiy Waidabu, your imprisonment term of 3 years is suspended for 3 years.

DATED this 01st Day of April 2026


Kiniviliame T. Keteca

Judge

