IN THE KIRIBATI COURT OF APPEAL] **CRIMINAL JURISDICTION]** **HELD AT BETIO]** **REPUBLIC OF KIRIBATI]**		**Criminal Appeal No. 1 of 2014**

BETWEEN	**THE REPUBLIC**	**APPELLANT**
AND	**BWEBWETAAKE DAN** **TANIERA DAN**	**RESPONDENTS**

Before: Paterson JA
Blanchard JA
Handley JA

Counsel: *Pauline Beiatau* for appellant
Arian Arintetaake for respondents

Date of Hearing: 12 August 2014
Date of Judgment: 15 August 2014

JUDGMENT OF THE COURT

1. The Attorney-General brings this appeal on behalf of the Republic against sentences of 12 months' imprisonment suspended for 12 months imposed on each of the respondents, who pleaded guilty to a charge of causing grievous bodily harm with intent. The question is whether the sentences were manifestly inadequate.

2. The circumstances of the offending were these. The victim, a school boy aged 15, had an argument with the younger brother of the respondents which led to a fight with the brother in an internet cafe. The fight ended and the brother left the cafe. Soon afterwards the respondents, aged 22 and 19 at the time of the offending, came to the cafe and immediately attacked the victim who was considerably smaller than them. Both punched and kicked the victim in the face and chest until he fell to the ground unconscious. They then left the scene.

3. The victim suffered a dislocation of his jaw which required him to be hospitalised for three weeks. He lost a tooth and his eyes were so swollen that he could not open them for several days.

4. There was no apology from the respondents until after they were charged with the offending. The appellant submitted that the eventual apologies were made only in an effort to escape imprisonment and there was no remorse.

5. In sentencing the respondent the Chief Justice accepted their previous good characters (noting but disregarding two convictions of one of them seven years beforehand for underage drinking). He considered that the actions of the respondents merited a custodial sentence. He took into account their guilty pleas and that they were both young and imposed 12 month sentences. But he concluded that the circumstances of the case, which he did not elaborate, justified full suspension on condition of good behaviour.

6. For the appellant, Ms Beiatau drew attention to the extent of the injuries suffered by the young victim, including permanent disfigurements from the loss of a tooth, and the length of his hospitalisation. She stressed the difference in the ages of the victim and the attackers and the fact that the respondents had plainly come to the internet cafe intent on violence. Importantly also, it was an aggravating factor that this was an attack by two fully grown men against one boy.

7. In response, Ms Arintetaake said that there had been an admission of wrongdoing right from the start of the police investigation, the respondents were comparatively young and of previous good character and the victim had recovered and gone back to school. She said that the respondents had acted as they did because the victim had been fighting with their brother. She suggested in her written submissions that he had started that fight but we do not find support for that submission in the materials before the Court.

8. In this Court's decision last year in *Republic v Teriao* [2013] KICA 12, it was suggested that useful guidance might be found, in sentencing for grievous bodily harm, in the New Zealand Court of Appeal's decision in *R v Taueki* [2005] NZCA 174; [2005] 3 NZLR 372. The present offending, which did not involve the use of any weapon, would fall at the bottom end of Band One in *Taueki* where the starting point for sentencing is imprisonment for 3-6 years.

9. However, for a number of reasons we are of the view that the proper sentence for each respondent was substantially below three years notwithstanding the aggravating factor that the attack on the victim was by more than one person. The mitigating factors are the early guilty pleas, the absence of the use of a weapon, the previous good character of the respondents and that the victim received no permanent injury other than the loss of the tooth.

10. In addition, we bear in mind that this is an appeal by the Republic on which a sentence is not to be increased to a greater extent than is necessary to remedy a manifest inadequacy. There is furthermore the consideration that the 12 month sentence was imposed more than one year ago and if not suspended would by now have been served.

11. In these circumstances we have, not without hesitation, determined not to increase the 12 month sentence, though stressing that if the High Court had imposed an 18 month sentence we would not have disturbed it.

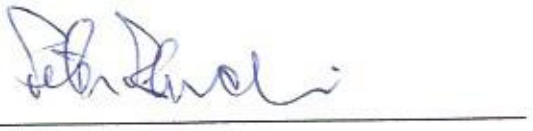
12. The Chief Justice did not articulate why he thought it appropriate to suspend the sentence and, with respect, we think he was wrong to do so. The charge of which the appellants were convicted was a very serious one which carried a maximum sentence of life imprisonment. Suspension of sentence will be rare for such offending even if mitigating factors properly reduce the sentence below two years. We see nothing in the facts of this case to justify the suspension. As Ms Beiatau submitted, there is an appearance

that the respondents have committed a serious offence and have received no real punishment. In sentencing for offending of this kind it is important that there be a deterrent message for the offenders and for others minded to act violently which would be absent if there were to be no serving of imprisonment in a case such as this.

13. The appeal by the Republic is allowed. The suspended sentence is quashed and replaced by a sentence of one year's imprisonment of each of the respondents.

14. They must now surrender themselves to the police station at Bairiki by 4 pm on Monday 18 August 2014 to begin their sentences which will run from the date on which they were taken into custody.

Paterson JA



Blanchard JA

Handley JA