

REPUBLIC

V

Sam Nemati

Date of Hearing: 9 February 2016

Date of Judgement: 16 February 2016

*Mr. Filimoni Lacanivalu of the Office of Director Public
Prosecutions for the Republic*

Mr. Ravunimase Tangivakatini for the defendant

RULING AND SENTENCE

1. The defendant is charged with 1 count of attempted suicide contrary to section 312 of the Criminal Code 1899. On the 4 February 2016 the defendant pleaded guilty and Mr. Tangivakatini representing the defendant sought leave of the court to present two sets of mitigation. The first set of mitigation is that in writing and submitted by Mr. Tangivakatini as the counsel for the defendant. The second set of mitigation is that to be presented by Mr. Stephen Sumner the defendant's Social Worker who is a team leader within the Case Management and Housing team, within Connect Settlement Services. The court gave the prosecution the opportunity to raise any issues regarding the approach sought to be taken by Mr. Tangivakatini in presenting the mitigation for the defendant. Mr. Livai Sovau who represented the prosecution at that time took no objections and the court allowed the defence to present the mitigation submissions. Mr. Tangivakatini first presented the submissions on mitigation in writing and then followed by Mr. Sumner who addressed the court.
2. The prosecution now objects to the report given by Mr. Sumer to the court, first on the 4 February 2016 and the same report in writing dated 4 February 2016 but filed with the court on the 5 February 2016. The prosecution have now raised its objections to the report presented to the court by Mr. Sumner and sought leave to have Mr. Sumner called to allow the prosecution to cross-examine him on his report.
3. On the right to cross-examine Mr. Sumner, the case authorities are clear "that there is no separate right of cross-examination other than when it arises after examination in chief..."¹

¹ Gitoa v Regina [2011]SBHC 111;HCSI-CRAC 46 of 2011 (8 August 2011) at page 2.

4. On the issue of failure by the defence to give notice to the prosecution of its intention to call Mr. Sumner to present its plea in mitigation, that duty on the part of defence to do so, has been waived by the prosecution, when Mr. Livai Sovau representing the prosecution, took no objection to Mr. Sumner addressing the court in mitigation as the case manager and team leader on behalf of the defendant. It is not open to the prosecution to first agree that Mr. Sumner address the court in mitigation, and when the prosecution do not agree with what he has to say to the court, to now turn around and apply to have him called as a witness to be cross-examined. Tacitly or otherwise when the concession was given by the prosecution without first demanding to know what Mr. Sumner was going to say to the court, the effect is that, the prosecution has waived its right to be given reasonable notice.
5. The prosecution submission that Mr. Sumner be called to be cross-examined on his report is dismissed. I will now proceed to sentence the defendant.
6. The maximum penalty for the offence of attempting to commit suicide under section 312 of the Criminal Code 1899 is one year imprisonment.

AGGRAVATING FACTORS

7. An aggravating feature that could be seen from the facts and the back ground history of this matter giving rising to the offending by the defendant in this case is that, the defendant was bent on getting what he want for his daughter regardless of the consequences and the impact this may have on the others. The defendant needs to be reminded that he is not the only one who needs to be served and whose welfare is being taken care of.
8. Another aggravating feature is that the offence is committed in the presence of his daughter who was not far away, and there is no suggestion that she did not know what was going on. In arguing for the welfare of his daughter in mitigation, the defendant needs to be reminded that his actions, do not in any way contribute to the positive development of his daughter. Yes he may have succeeded in getting a place, but it does not change the fact that he has inflicted self-harm, which can in the circumstances be described as being violent to his own person. The effect of his action could be seen as sending the message to his very young daughter that inflicting self-harm is a means to get away with what you want and it is okay to do this in the community. This certainly is not his intention by virtue of the guilty plea that he has entered but that is an alternative view that could be imputed to the effect of his actions based on the facts presented. This is

not the right way to address issues and this court has a responsibility to put that message across clearly.

MITIGATING FACTORS

9. The defendant is a first offender and is a sole parent in Nauru looking after his 8 year old daughter for the past 22 months. He has no prior convictions and has pleaded guilty to the offence in the first instance. These factors must mitigate in favour of a reduction in sentence.
10. Mr. Tangivakatini has submitted that the defendant understands that his actions were harmful and dangerous but that his zealous nature in trying to protect his family was ultimately his down fall. This may be so, but the defendant needs to be reminded that we live in a community where we must be mindful of others needs as well.
11. Mr. Sumner has given his report to the court, and in terms of matters that are specific to the defendant, Mr. Sumner has observed that the defendant is a sole parent of an 8 year old child, who is of a different gender with her own individual complex needs and that she is being engaged with International Medical Health Services due to her own mental health concerns. No report on the daughter's mental health prognosis has been given to the court.
12. Mr. Sumner had further observed that the defendant has raised with the Connect Settlement Services the fact that he was sharing accommodation with a couple with no children, but would prefer to live with other children with whom his daughter could interact. Mr. Sumner has further informed the court that the defendant has raised his housing situation on a number of occasions since his first request, and has identified that there are a lack of Iranian children at the settlement site where he resides with his daughter which further adds to his daughter's isolation.
13. Mr. Sumner further observed that during the unlawful occupation of the Room A4 at Nibok, the defendant stated that he could not leave Nibok room 4a, because as he believed that as a father and primary care-giver to his eight year old child, he need to improve their situation. Mr. Sumner has further observed that he has had meetings with the defendant during his period of detention at the Nauru correctional Services Facility and that the defendant had stated his regret at the course of action he took, and that he wished to engage positively with Connect Settlement Services to resolve his current housing situation, and his wish to be re-united with his daughter. In summary these are the aspects of Mr. Sumner's report that I will take into account in determining the appropriate sentence to be imposed on the defendant.

14. There is no sentencing guideline for the offence of attempted suicide in Nauru. The prosecution has submitted that the court impose a sentence that would deter other would be offenders who resort to self-harm to avoid lawful actions against them or simply get what they want. Thus this court should impose a sentence that denounces the conduct of the defendant and other would be offenders calling for the immediate imposition of a custodial sentence of 2 months imprisonment. There is no statistical data available to show the prevalence of the offence of attempted suicide in Nauru. I am therefore unable to take the approach submitted by the prosecution in this case.

15. Taking into account both the mitigating factors and the aggravating factors present in this case, I am of the view that an appropriate sentence to be imposed is one that would allow the defendant to continue to care for and look after his 8 year old daughter and at the same time give the defendant the opportunity to prove to himself that life is worth living but with a responsibility to be thoughtful and considerate of others in the community. I exercise the courts discretion to sentence under section 19(8) of the Criminal Code 1899. I convict the defendant and sentence him to keep the peace and be of good behaviour for 12 months in the Principal Sum of \$200.00.

Dated this 16 February 2016



Emma Garo
Resident Magistrate

