



IN THE DISTRICT COURT OF NAURU
CRIMINAL JURISDICTION

Criminal Case No32/2018

THE REPUBLIC

v.

DABUB JEREMIAH

SENTENCE

Before: RM Penijamini Lomaloma

Prosecutor: Ms. Laisani Tabuakuro

Defence: Mr. Sevuloni Valenitabua

Date of Hearing: 28th, 29th, 30th August 2018

Judgment: 14th September 2018

Date of Sentence: 3 October 2018

Catchwords: *Criminal law—Causing harm to a Police Officer; section 77 Crimes Act 2016; Sentence.*

Introduction

1. The Defendant was convicted after a trial with causing harm to a Police officer contrary to section 77(a)(b)(c) (d) & (ii) of the Crimes Act 2016.
2. The defendant is not charged with the aggravated form of the offence so the maximum sentence is 8 years imprisonment.
3. The facts are set out fully in my judgment. However, for the purposes of sentencing, I will set out the pertinent facts on which I base this sentence.
4. The defendant was on a motor bike with another person when they met a police vehicle on the morning of 4th April 2018 at the extension of the airport runway. Police Officer Mcpherson Brechtefeld was driving the vehicle and he saw the driver of the motor bike with his face covered in a mask. Officer Brechtefeld turned his vehicle around and followed the motorbike. With him was Police Officer Jonas Menke. They lost the motor bike in the chase and they asked some children at the shop near Milton Ross who told them the bike had gone to the back of the shop. The two officers drove there, parked their vehicle and searched on foot for the driver. They found a motor bike whose engine was hot. Officer Brechtefeld was in front and as he neared the hut at the back of Dominic Kepae's house, a man came out of the hut and punched him on his ear

and forehead several times. Officer Jonas Menke, saw what was happening and tackled the man to the ground and held him from the back. He ripped off the mask that the man was wearing and discovered that it was the defendant. The defendant stopped struggling as soon as the mask was taken off his face.

5. Officer Brechtefeld did not receive any visible injuries. He did say on oath that he felt pain in his ear and his forehead where he was punched by the defendant.

Personal Circumstances of the Defendant

6. The defendant is 28 years old and is married but separated. He has custody of his 3 year old daughter. He is employed as a carpenter with Manza Construction Company in Nauru. The defendant is a first offender and still maintains that he is not guilty and that he was in fact assaulted by the Police.

Mitigating Circumstances

7. The only mitigating circumstance of this offending is that the defendant is a first offender. To show remorse for something that he claims he has not done would be an admission of guilt and I will not hold that against him in this sentence. The Court has reached its verdict on the evidence before it and will base its sentence on the evidence it found.

Purposes of Sentencing

8. The purposes of sentencing are set out in section 278 of the Crimes Act as:-

278 Purposes of sentencing

The purposes for which a court may impose a sentence on an offender are as follows:

- (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;*
- (g) to recognise the harm done to the victim and the community.*

9. In each individual offending, the above requirements will vary in importance depending on the offence, how it was committed and the circumstances of the offender, the victim and many other factors which are set out in section 279 of the Act.

Section 279 of Crimes Act

10. Section 279 of the Crimes Act sets out the matters to be taken into account by the Court in sentencing a person and I have highlighted below the sections that are known to the Court or applicable in this case:

279 Sentencing considerations—general

(1) *In deciding the sentence to be passed, or the order to be made, in relation to a person for an offence against a law of Nauru, a court must impose a sentence or make an order that is of a severity appropriate in all the circumstances of the offence.*

(2) *In addition to any other matters, the court must take into account whichever of the following matters are relevant and known to the court:*

(a) *the nature and circumstances of the offence;*

(b) *any other offences required or permitted to be taken into account;*

(c) *if the offence forms part of a course of conduct consisting of a series of criminal acts of the same or a similar character—the course of conduct;*

(d) *any injury, loss or damage resulting from the offence;*

(e) *the personal circumstances of any victim of the offence;*

(f) *the effect of the offence on any victim of the offence;*

(g) *any victim impact statement available to the court;*

(h) *the degree to which the person has shown contrition for the offence by taking action to make reparation for any injury, loss or damage resulting from the offence or in any other way;*

(i) *if the person pleaded guilty to the charge for the offence—that fact;*

(j) *the degree to which the person cooperated in the investigation of the offence;*

(k) *the deterrent effect that any sentence or order may have on the person or on anyone else;*

(l) *the need to ensure that the person is adequately punished for the offence;*

(m) *the character, antecedents, age, means and physical or mental condition of the person;*

(n) *the prospects of rehabilitation of the person;*

(o) *the probable effect that any sentence or other order under consideration would have on any of the person's family or dependents;*

(p) *if the offence was committed by an adult in circumstances where the offending conduct was seen or heard by a child (other than another offender or a victim of the offence)—those circumstances.*

Seriousness

11. The severity of the sentence required by section 279(1) requires the examination of the objective seriousness of an offending. This is arrived at by looking at the culpability of the offender and any injury, loss or damage resulting from the offence. This was an intentional act and therefore highest on the culpability scale.
12. The evidence shows however that the intention always of the defendant was to get away from the Police that were chasing him. I find that the intention to carry out this offence was held by him for a very short period as to be a reaction to being caught. The longer a person holds intent, the greater the moral culpability for the offence. This is the subjective part of the seriousness of the offending. His culpability is not increased.

13. The defendant is a big powerful man and the harm to the victim is minimal, indicating the degree of force used. The victim only felt pain and there were no visible injuries reported.
14. Taking into account the objective seriousness and the harm caused, I would rate his offending at the lower end of the scale for this offence.

Circumstances of offending

15. The defendant had been chased by the Police and was hiding in the hut when the Police officers were searching for him on foot using the light from their parked car and a phone. As Officer Brechtefeld got closer and closer to the defendant, he tried to run away and was blocked by the officer and the defendant assaulted the officer. I find that there was no premeditation in this assault.

Aggravating Factor

16. The only aggravating factor of this offending is that it was done at night. The fact that it was done to a Police officer cannot be an aggravating factor because it is part of the definition of the offence.

The Nature and Circumstances of the Offence

17. Section 279(2)(a) requires the Court to look at the nature and circumstances of the offence. The offence of causing harm to a Police officer is in Division 1 of the Crimes Act and the maximum sentences in years for these offences without aggravation are:-

a. Intentionally causing serious harm	15
b. Recklessly causing serious harm	12
c. Negligently causing serious harm	10
d. Intentionally causing harm	7
e. Recklessly causing harm	5
f. Causing harm to public official	8
g. Causing harm to police officer	8
h. Common assault	1

18. From the maximum sentences, it is clear that the offence of causing harm to a Police officer is considered serious because a Police officer is performing an essential task and an attack on one is an attack on the very foundations of law and order. Punishment must be meted out for this offence to show the offender that he has committed a serious offence and to deter him and the members of the public from attacking police officers executing their duty.

Imprisonment or not

19. Section 280 sets out the factors that the Court must take into account when considering a sentence of imprisonment and I will consider this next: -

280 Sentencing considerations—imprisonment

A sentence of imprisonment may be imposed on a person only if: in the opinion of the court:

- (i) the person has shown a tendency to violence towards other people; or*
- (ii) the person is likely to commit a serious offence if allowed to go at large; or*
- (iii) the person has previously been convicted of an offence punishable by imprisonment; or*

(2) *The consistency that is sought is consistency in the application of the relevant legal principles.*

(3).....

(4) *Such consistency is not synonymous with numerical equivalence and it is incapable of mathematical expression or expression in tabular form.*

(5) *For that and other reasons, presentation in the form of numerical tables, bar charts and graphs of sentences passed on federal offenders in other cases is unhelpful and should be avoided.*

26. The consistent application of the sentencing provisions of the Crimes Act will ensure consistency in sentencing.

Deterrence

27. One of the purposes of sentencing is to deter offenders: s. 278(b) of Crimes Act. In *Griffiths v The Queen* (1977) 137 CLR 293; *Jabobs J* said at 327:

The deterrent to an increased volume of serious crime is not so much heavier sentences as the impression on the minds of those who are persisting in a course of crime that detection is likely and punishment will be certain. The first of these factors is not within the control of the courts; the second is. Consistency and certainty of sentence must be the aim.

Sentence

28. I have taken account of kinds of sentence set out in section 277 of the Crimes Act; the purposes of sentencing in section 278; the factors to be taken into account as set out in section 279; and whether imprisonment is necessary as required by section 280 and I have taken account of your personal circumstances and consider that a conviction and a term of imprisonment is the most appropriate option. My maximum sentence is 3 years imprisonment and as I had considered that the seriousness of your offending was at the lower end of the scale, and since I consider the aggravating factor to be balanced by the mitigating factor, the defendant is convicted of the offence and sentenced to 3 months imprisonment.

Order

29. The defendant is sentenced to 3 months imprisonment less 2 weeks spent on remand from 5th—19th April 2018.

30. 14 days to appeal.

Penijamini R. Lomaloma
Resident Magistrate

