



IN THE DISTRICT COURT OF NAURU

Criminal Jurisdiction

Criminal Case No. 21/2019

BETWEEN: THE REPUBLIC OF NAURU

Complainant

AND: DD

Defendant

Before: Penijamini R. Lomaloma

Republic: Mr. Filimoni Lacanivalu of the Office of the DPP

Defendant: Mr. Ravunimasei Tagivakatini of the Public Defender's Office

Hearing: 24 Jan 2020

Date of sentence: 29 January 2020

SENTENCE

Catchwords: Introduction

1. The defendant is a child and was 17 at the time of the offending. Pursuant to section 55(b) of the Child Protection and Welfare Act 2016, I prohibit the publication of the child's name or any information that might lead to his identification. He will be referred to in this sentence as DD.
2. You pleaded guilty one count of Common Assault contrary to section 78(1)(a)(i) and (b) (ii) of the Crimes Act 2016. The summary of facts which you admitted states that on 13th August 2019, you went to question your 14 year old sister about who had taken your marijuana. She replied that it was your older brother but you started throwing punches at her face. She could not recall how many punches you threw at her. You also pushed her at the back and kicked her whilst she was on the floor. Your older brother came into the room and seeing what you were doing, he faced off with you and you two fought.

Later, your other older brother came home after being contacted by your sister whom you had assaulted. This older brother came home, confronted you and you fought him. This second older brother then chased you away.

Submissions

3. I have received very helpful submissions from Counsels and I thank them for their efforts.

Personal Circumstances.

4. You are now 17 years old and you are in High School. You will be in Form 6 this year. You reside with your parents.

Mitigation

5. Your counsel submits that this was a spur of the moment and was not pre-planned. You acknowledge that what you did was wrong and hurtful to your sister and the family. Your counsel says you are remorseful and I accept this because you pleaded guilty; that you pleaded guilty at the first opportunity after the summary of facts was given to you; that you are a young offender; and a first offender. Your counsel said that you have reconciled with your sister but she cannot come to confirm the reconciliation as she is attending school in Fiji.

Seriousness

6. The starting point in any sentence is to look at the seriousness of the offending. The seriousness of the offending is assessed after looking at your fault or culpability for the offending and the harm caused, intended or likely to be caused.
7. This was a deliberate act and therefore highest on the culpability scale. Your culpability was reduced however because it was not preplanned. There are no injuries to your sister but I can infer that she must have suffered pain and humiliation and psychological hurt after the assault. I would therefore assess the seriousness of this offending at about the midpoint of this offence.
8. The aggravating factors which increase the culpability of this offending is that you threw multiple punches and kicked your sister while she was on the ground; that it was an unprovoked attack and that you were only stopped by your brother coming in.

The Child Protection and Welfare Act 2016

9. Section 48(b) of the Child Protection and welfare Act states that a sentence of imprisonment may only be imposed against a child as a sentencing option of last resort.

Sentencing of Young Offenders Committing Serious Violent Offences

10. Section 278 (d) of the Crimes Act 2016 states that one of the aims of sentencing is the rehabilitation of the offender. Section 279 (2) (m) & (n) requires the Court to take into account the age of the offender and the prospects of rehabilitation respectively of the offender. These provisions are the primary considerations when considering sentences for children, in recognition of the fact that they are immature and have not fully developed the mental and emotional capacity and maturity expected of adults.
11. The English Guidelines for sentencing young people, states at paragraph 1.5 and 1.6¹:

*It is important to bear in mind any factors that may diminish the culpability of a child or young person. Children and young people are not fully developed and they have not attained full maturity. As such, this can impact on their decision making and risk taking behaviour. **It is important to consider the extent to which the child or young person has been acting impulsively and whether their conduct has been affected by inexperience, emotional volatility or negative influences.** They may not fully appreciate the effect their actions can have on other people and may not be capable of fully understanding the distress and pain they cause to the victims of their crimes. Children and young people are also likely to be susceptible to peer pressure and other external influences and changes taking place during adolescence can lead to experimentation, resulting in criminal behaviour. **When considering a child or young person's age their emotional and developmental age is of at least equal importance to their chronological age (if not greater).***

1.6 For these reasons, children and young people are likely to benefit from being given an opportunity to address their behaviour and may be receptive to changing their conduct.

12. These guidelines are explanatory notes for Courts of the statutory provisions in England which are similar to those quoted above from the Crimes Act 2016.
13. A sentence of imprisonment will have a much greater negative impact on you as a child than would an adult. Parliament has directed that you be sentenced differently from an adult in recognition of your immaturity and development age, which I consider to be much lower than a person of say 18.

Reconciliation.

14. Section 123 of the Criminal Procedure Act requires the Court to promote reconciliation:

Promotion of Reconciliation

¹ Sentencing Children and Young People Overarching Principles

A Court may on terms of payment of compensation or other terms approved by it promote reconciliation and encourage and facilitate the settlement in an amicable way of all proceedings before it for common assault or for any other offence of a personal or private nature for which, upon conviction, a fine or sentence of imprisonment for a term not exceeding one year may be imposed, and may thereupon order the proceedings to be stayed or terminated.

15. A brother and sister would most likely have a fight at one stage or other in their life as they learn and experiment with becoming an adult. There are in-built mechanisms in a family to deal with these sort of situations and your older brothers fought you to teach you a lesson. Your sister has forgiven you and again, that is part of being a family. When you pleaded guilty, I did not record a conviction as that is a matter for consideration at the sentencing phase.
16. I have taken into account the matters stated above, in particular your age, the fact that you have been punished by your brothers and the fact that your sister has reconciled with you and in exercise of the powers in section 123 of the CPA, I order that the proceedings be terminated.



Penijamini R. Lomaloma

Resident Magistrate



