



## IN THE DISTRICT COURT OF NAURU

### Criminal Jurisdiction

Criminal Case No. 04/2020

### THE REPUBLIC OF NAURU

-v-

### AMY SPANNER

*Before: RM. Neil Rupasinghe*

*Prosecutor: Ms Francis Puleiwai*

*Defence: Ms Francilia Akubor*

*Date of Sentence: 29<sup>th</sup> September 2022*

### SENTENCE

**Catchword:** *Sentence— Driving under the influence of liquor contrary to section 69(1) & (2)(a) Read with section 81 of the Motor Traffic Act 2014.*

1. The accused pleaded guilty to 01 count of driving under the influence of liquor contrary to sections 69(1) & (2)(a) of *the Motor Traffic Act 2014* after the charge was read, explained and understood by her.
2. The summary of Facts tended by the prosecution could be reproduced as that the above-named AMY SPANNER, on the 7<sup>th</sup> of November 2020, at Yaren District in Nauru, had driven a Yamaha Crypton Motorcycle while she was under the influence of liquor and the proportion of alcohol count in her breath had been 0.200 grams which exceeded the prescribed limit of 0.0525 grams of alcohol per 210 litres of breath.

3. This court prefers to mention Section 79 of the Motor Traffic Act 2014, which has described the Penalties for the relevant offence and which provides as follows:-

“ (1) Any person who is convicted of an offence under Section 69(2) is liable to:  
(a) for a first offence: (i) mandatory suspension of his or her driver’s licence for 6 months; and (ii) a maximum fine of \$1,000; or (iii) imprisonment for 6 months;  
(b) for a second offence: (i) mandatory suspension of his or her driver’s licence for 12 months; or (ii) a maximum fine of \$3,000; or (iii) imprisonment for 12 months; and  
(c) for a third offence: (i) mandatory suspension of his or her driver’s licence for 5 years; and (ii) a maximum fine of \$10,000; or (iii) imprisonment for 3 years.”

4. Based on her plea of guilt, this court **formally convicts the accused for the charge of driving under the influence of liquor contrary to sections 69(1) & (2)(a) of the Motor Traffic Act 2014.**

5. Both prosecution and defendant tendered sentencing submissions supporting their stance. Accordingly, the court would consider the same when imposing fines and penalties with the justifications on mitigating and aggravating facts.

6. This court recognises that the convict is 27 years old, the first offender, and there is no harm or damage to the general public by the convict's conduct as the cause of action is a police booking. Nevertheless, on the other hand, this court would not simplify the convict's conduct due to the threat she created to herself and the lives of the general public who use the road facilities simultaneously. Further, this court is mindful that the convict has aided in minimising the use of the court's resources by pleading guilty at the very first opportunity, which is an excellent deal over public tax monies.

7. Filed mitigation indicated that the convict is a single mother of one female child aged six years and heavily depends on her mother for support and had cooperated with the police during the investigation by undergoing a breathalyser test and at the detention in the police station. This court would consider her conduct during the investigation as a sign of remorsefulness over the offence.

8. On the other hand, this court noticed that the level of alcohol at the time of the incident in the convict’s body was very high, amounting to 0.200grams of alcohol per 210 litres of breath. Therefore, it would consider an aggravating fact for this sentence. However, these courts will not consider mere intoxication as aggravating fact as it is itself an element of the offence but the level of intoxication or alcohol at the time of offence.

9. Further, even though there is no recorded harm or damage, this court is mindful of the threat created by the convict to the general public, especially to

children who play and move by the roadside without giving much attention to vehicles. As a child's mother, the convict must think twice and consider her conduct's consequences. Therefore, this court would not give any discount to her single motherhood as she had behaved recklessly, which is aggravating. Therefore convict attracts a custodial sentence for this reckless attitude despite her motherhood.

10. The Defence counsel also referred to the case of R v Baylon Cook[Case 32/2021] and acknowledged that the intoxication level of convicts might be rendered upper end of the scale of seriousness. In the matter of R v Baylon Cook, the defendant was convicted and fined \$700 by the court after the defendant's plea on a count of driving intoxication. He had cooperated with the police and pleaded guilty at the first opportunity. It measured at 0.097 grams i.e.84%, which is much lower than the present case.
11. This court observes that the Nauruan magistrate courts have attempted to form a ratio between the amount of alcohol and recklessness. The court has imposed higher fines for the higher amount of alcohol for the offence of driving under the influence of liquor contrary to sections 69(1) & (2)(a) of Motor Traffic Act 2014. In R v victoria Debao [Case 31/2021], the court imposed an \$800 fine with the mandatory suspension of the driver's licence.
12. Further, the defence counsel had sought a non-custodial sentence as a custodial sentence might disturb the well-being of the convict's underaged daughter. Supporting his stance, counsel mentioned the possibility that the child would be exposed to sexual offences on the rise. This court disagrees with the same: at the time of the relevant intoxication, the child was in the safe hand, and the convict was sure about her daughter's safety, or she was not concerned about it at all. However, due to other mitigation, the convict deserves a non-custodial sentence.
13. The Prosecuting counsel had submitted R v Menke[2021] NRDC 31; *Criminal Case 31/2021*, where the court imposed a \$ 700 fine and mandatory suspension of driving licence for six months. This court is more interested in the judicial dicta, which describes the legal concern over drink and driving. In Para 5 and 6, the court has stated;

*“That this was a reckless act. You knew you had been drinking and you decided to drive, and you were reckless as to whether the alcohol content in your breath was under the prescribed limit or not.*

*There was no harm caused to anyone by this offending so the measure of the harm is not the harm caused but the harm that could have been caused by your driving whilst under the influence. The more a person is intoxicated, the more dangerous he becomes to himself and others. The level of alcohol in your*

*breath is 61% higher than the prescribed amount of alcohol. Therefore, I would rate your offending at the serious end of the scale."*

14. This court is mindful of the rehabilitation of a convict and the public's safety; these two factors could be introduced as two sides of one coin. However, rehabilitation does not have meaning when public safety is in danger. There is no public safety if the judiciary fails to rehabilitate the convicts as they are part of the same society.
15. The stance mentioned above in paragraph 14 has justified by section 277 of the crimes act 2016 and which provides as follows;

### *" Kind of Sentences*

#### *Sec: 277.*

*Where a court finds a person guilty of an offence, it may, subject to any particular provision relating to the offence and subject to this act, do any of the followings;*

- (a) record a conviction and order that the offender serve a term of imprisonment;*
- (b) with or without recording a conviction, order the offender to pay a fine;*
- (c) record a conviction and order the discharge of the offender;*
- (d) without recording a conviction, order the dismissal of the charge for the offence; or*
- (e) imposed any other sentence or make any order that is authorised by this or any other written law of Nauru"*

16. This court strictly believes that the judiciary should not allow or facilitate the public to buy mercy or leniency by way of fines but should always impose the sentence that bears the condition of deterrent where it is applicable and possible. This differs from the formal imprisonment provided in the penalty sections.
17. In addition, it is prudent to state that suspending imprisonment is not a punishment but an option granted to the convict to select, which always brings an extra burden to maintain good behaviour or avoid wrongdoing. Further, it assures the public about their safety from said misbehaviour of the convict.
18. When the court imposes formal imprisonment, the culprit will lose his freedom of movement, but with the suspended imprisonment, they would only be subject to conditions. Therefore this court distinguishes the "Maximum \$1000 fine "OR" 6 months Imprisonment" sentence from "Maximum \$ 1000 Fine "AND" Suspended Imprisonment" sentence. Therefore imposing suspended imprisonment always would not conflict with the penalty section as the court is issuing a prescribed fine and extra condition.

19. Further, the crimes act 2016 of Nauru has provided as follows;

*“ Sec: 279. Sentencing considerations-general*

*(I) 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 shall impose a sentence or make an order that is of a severity appropriate in all the circumstances of the offence.”*

20. Therefore, after referring to the norms, principles & aspirations of sentencing, the personal interest of the convict and the general public's safety, this court concludes that suspended imprisonment and a fine would be adequate for absolute determination of all the sentencing concerns.

21. This court has taken into account the seriousness of this offence, the aggravating factors and the mitigating factors submitted by both parties, and this court imposed;

- (1) 5 months of imprisonment, which is suspended for 12 months, and if the convict is found guilty of any offence connected to drinking and driving within the suspended imprisonment period, this imprisonment will be executed despite the sentencing date of the following case.
- (2) \$ 600 fine. In default to be imprisoned for a term not exceeding the lower of (a) one day for every 80 cents of the fine remaining unpaid OR (b) 6 months. 40 days to pay the fine.
- (3) Further, the driving licence of the convict is suspended for 6 months from today.

22. The convict has 21 days to appeal.

**Neil Rupasinghe**  
**(Resident Magistrate)**