



**IN THE DISTRICT COURT OF NAURU  
AT YAREN  
CRIMINAL JURISDICTION**

Criminal Case No. 7 of 2024

**BETWEEN: THE REPUBLIC OF NAURU**

**PROSECUTION**

**AND: RUEI-YANG HUANG**

**DEFENDANT**

**BEFORE: Resident Magistrate Mr. Vinay Sharma**

**DATE OF HEARING: 22 March 2024**

**DATE OF RULING: 3 April 2024**

**APPEARANCE:**

**APPLICANT: A Driu**

**RESPONDENT: BW Duburiya**

# SENTENCE

## BACKGROUND

1. The defendant is to be sentenced for the offence of desecrating the flag of the Republic of Nauru in contravention of Section 18(1)(b) & (2) of the *Naoero National Anthem, Emblem and Flag Protection Act 2018* (“the Act”).
2. On 18 March 2024 counsel for the defendant filed its Sentencing Submissions for the Accused Rwei-Yang Huang, and the Director of Public Prosecutions (“DPP”) filled the Summary of Facts.
3. On 18 March 2024 the defendant pleaded guilty to the charge laid against him.
4. The DPP read out the Summary of Facts and the defendant agreed to the same.
5. The court directed the DPP to file her sentencing submissions on or before 20 March 2024. The counsel for the defendant was directed to file her supplementary submissions on or before 22 March 2024. The DPP was granted an extension to file her submissions on 22 March 2024.
6. On 22 March 2024 the DPP filed her sentencing submissions.
7. On 23 March 2024 sentencing hearing was conducted.

## FACTS SURROUNDING THE CIRCUMSTANCES OF THE OFFENCE

8. The following are the facts surrounding the offence:
  - i. On 18 January 2024 between 3.00PM and 4.00PM, the accused was working at the piggery farm situated at Anabar District. He was burning paperwork from boxes in a fenced fire-lit-pit inside the vicinity of the piggery farm.
  - ii. On the said date and time, private contractor David Paul Kanimea (PW1) and his work colleague namely, Tioti Kwong (PW2), were inside the Piggery Farm collecting small rocks for their private company.
  - iii. PW1 witnessed Riaree Materaa (PW3), a Nauruan worker at the piggery farm, hand over the boxes to the accused who in turn emptied the contents of the boxes into the fire-pit.
  - iv. Whilst the defendant was emptying the contents of one of the boxes into the fire-pit, a flag of the Republic of Nauru appeared in amongst the papers being

burnt.

- v. Upon seeing this occur, PW1 called out to his work colleague PW2 to retrieve his mobile phone inside their vehicle which was parked nearby.
- vi. With his mobile phone, OPPO Reno 7 Pro, in his hand, PW1 video recorded the burning of the flag of the Republic of Nauru amongst the papers. The accused continued burning the flag with the help of a long wooden implement (stick) stirring the burning items, including the flag.
- vii. Following the taking of the video-recording on his mobile phone, PW1 told the accused that what he had done was wrong but there was no response from the accused.

### **PERSONAL CIRCUMSTANCES OF THE DEFENDANT**

9. The following are the relevant personal circumstances of the defendant which is distilled from the document filed by the defendant in relation to the sentencing:
- i. The defendant is 26 years old.
  - ii. He has a Masters in Animal Science from the National Taiwan University.
  - iii. He is an upstanding member of society. He engages in community services voluntarily, such as cleaning the harbor at Anibare, distributing fish caught by himself to the Nauruan community, and providing boiled eggs to school students.
  - iv. He is single.
  - v. He is the sole bread winner for his parents who are under his care in the Republic of China (Taiwan). Both his parents are retired, and his mother suffers from rheumatoid arthritis. The defendant pays for his parents' medical needs.
  - vi. He has never been in trouble with the law prior to his current offending. Further, he has never been charged with a crime or offence other than the one he has pleaded guilty to.
  - vii. As per the return date deadline, the Taiwan Technical Mission staff have returned to the Republic of China (Taiwan). Only the defendant is in Nauru. He is residing at Meneng Hotel.
  - viii. The Republic of China (Taiwan) government has ceased to pay the defendant's salary, which was \$750 per fortnight.

- ix. He entered a plea of guilty so that he would be afforded leniency. He has done this so that he may be able to travel back to the Republic of China (Taiwan) to look after his parents.
  - x. He wishes to continue with his work by providing community services when he leaves Nauru, and this may involve travelling overseas.
10. The counsel for the defendant filed letters of support by Yi-Long Lee and Jansi Demaunga.

### **AGGRAVATING FACTORS**

11. The following are the aggravating factors in this matter:
- i. The burning of the flag took place in the presence of Nauruan workers, which caused emotional injury to the Nauruan workers who witnessed its burning.
  - ii. The burning took place after the severing of diplomatic relationship between the Republic of Nauru and the Republic of China (Taiwan).
12. The DPP submitted that the notable aggravating feature in this case was the burning of the flag. The court finds that the burning of the flag cannot be used as an aggravating factor because it is an element of the offence.

### **MITIGATING FACTORS**

13. The court finds the following mitigating factors in favor of the defendant:
- i. The defendant has been an upstanding member of society.
  - ii. The defendant is the sole bread winner of his family.
  - iii. The offending did not take place in a public area.
  - iv. There was no display of violence during the offending.
  - v. The defendant has elderly parents whom he looks after.
  - vi. The defendant is not an activist.
  - vii. The defendant is a young adult with no previous convictions.
  - viii. The defendant is genuinely remorseful and he addressed the court in relation to

this by making a personal statement.

## **OBJECTIVE SERIOUSNESS OF THE OFFENDING**

14. The defendant pleaded guilty to the offence he is charged with.
15. Section 18(1)(b) & (2) of the Act provides as follows:

### ***18 Desecrating the Flag***

*(1) A person shall not:*

*(a) modify the Flag by placing any emblem, letters, slogan, words or representation on it; or*

*(b) use, display, destroy, burn, mutilate, insult, damage, injure or tear the Flag in any manner.*

*(2) A person who contravenes subsection (1), commits an offence and upon conviction is liable to a fine not exceeding \$100,000 or to a term of imprisonment not exceeding 5 years or to both.*

16. The maximum penalty under Section 18(2) of the Act is a fine not exceeding \$100,000 and/or a term of imprisonment not exceeding 5 years.
17. The burning of the flag took place at the piggery farm managed by the Taiwan Technical Mission in the presence of Nauruan workers. They felt emotionally hurt witnessing the burning of their national flag. The defendant continued to burn the flag despite being recorded doing so. Further, the offending was done against the people of Nauru, and in this regard alone it is very serious in nature.
18. The defendant submitted that he did not intend to burn the national flag of the Republic of Nauru. However, the evidence agreed to suggests that when the flag was thrown in the fire-lit-pit, the defendant did not make any effort to remove the flag from the fire-lit-pit. Instead, he continued to stir the items in the fire-lit-pit to make sure it burnt. If he did not intend to burn the flag then he would have taken immediate steps to remove the flag from the fire-lit-pit. This fact, coupled with the fact that the burning took place at the time when the Republic of Nauru severed its diplomatic relationship with the Republic of China (Taiwan), only establishes a higher level of moral culpability on the part of the defendant.
19. Having considered the aggravating circumstances, mitigating circumstances, the personal circumstances of the defendant, and the moral culpability of the defendant, the court finds that the objective seriousness of the offence is at the midrange of the level of seriousness.

## RANGE OF SENTENCES

20. As rightly submitted by the counsels, this is the first occasion on which this court is sentencing a defendant charged under Section 18(1)(b) & (2) of the Act. There are no local cases to guide the court on the applicable sentencing range.
21. The court finds that appropriate discount would be given to the defendant for his early guilty plea.

## SENTENCING APPROACH AND PRINCIPLES

22. Section 278 of the *Crimes Act 2016* provides the following purposes for sentencing an offender:

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

23. Section 279 of the *Crimes Act 2016* outlines the considerations that the court must take into account when sentencing a person found guilty of an offence. The considerations under this section stems from Section 278 of the *Crimes Act 2016*.
24. Section 280 of the *Crimes Act 2016* provides the sentencing considerations that must be taken into account when deciding whether a term of imprisonment is appropriate.
25. Section 281 of the *Crimes Act 2016* provides the considerations that the court must take into consideration as a far possible when deciding to impose a fine on a person found guilty of an offence.
26. Hunt CJ at CL in the Court of Criminal Appeal of NSW in *R v MacDonell*<sup>1</sup> stated that:

*The sentencing procedures in the criminal justice system depend upon sentencers making findings as to what the relevant facts are, accepting the principles of law laid down by the Legislature and by the courts, and exercising*

---

<sup>1</sup> (unrep, 8/12/95, NSWCCA) at [1]

*a discretion as to what sentence should be imposed by applying those principles to the facts found.*

27. Section 278 of the **Crimes Act 2016** adopts the common law principles of sentencing as was found in *Veen v The Queen (No 2)*<sup>2</sup> with reference to a similar sentencing provision in Australia. In that case Mason CJ, Brennan, Dawson and Toohey JJ in their judgment in the High Court of Australia made useful observations with regard to the interaction between the different sentencing purposes:

*... sentencing is not a purely logical exercise, and the troublesome nature of the sentencing discretion arises in large measure from unavoidable difficulty in giving weight to each of the purposes of punishment. The purposes of criminal punishment are various: protection of society, deterrence of the offender and of others who might be tempted to offend, retribution and reform. The purposes overlap and none of them can be considered in isolation from the others when determining what is an appropriate sentence in a particular case. They are guideposts to the appropriate sentence but sometimes they point in different directions.*<sup>3</sup>

28. Further, the High Court of Australia in *Muldock v The Queen*<sup>4</sup> reconfirmed the common law heritage of the relevant provision:

*The purposes there stated [in s 3A] are the familiar, overlapping and, at times, conflicting, purposes of criminal punishment under the common law [Veen v The Queen (No 2) at 476–477]. There is no attempt to rank them in order of priority and nothing in the Sentencing Act to indicate that the court is to depart from the principles explained in Veen v The Queen (No 2) [at 476] in applying them. [Relevant footnote references included in square brackets.]*

29. Having referred to the cases above on the application of the purposes for sentencing, the court emphasizes on how the principle of proportionality as a fundamental sentencing principle guides and binds the balancing exercise of a sentencer with regard to the various purposes of sentencing referred to in Section 278(b)(c)(d)(e)(f) & (g) of the **Crimes Act 2016**. In this regard Howie J, with whom Grove and Barr JJ agreed, made the following observations in the Court of Criminal Appeal of NSW in *R v Scott*<sup>5</sup>:

*There is a fundamental and immutable principle of sentencing that the sentence imposed must ultimately reflect the objective seriousness of the offence committed and there must be a reasonable proportionality between the sentence passed and the circumstances of the crime committed. This principle arose*

---

<sup>2</sup> (1988) 164 CLR 465

<sup>3</sup> *Veen v The Queen (No 2)* (1988) 164 CLR 465

<sup>4</sup> (2011) 244 CLR 120 at [20]

<sup>5</sup> [2005] NSWCCA 152 at [15]

*under the common law: R v Geddes (1936) SR (NSW) 554 and R v Dodd (1991) 57 A Crim R 349. It now finds statutory expression in the acknowledgment in s 3A of the Crimes (Sentencing Procedure) Act that one of the purposes of punishment is “to ensure that an offender is adequately punished”. The section also recognises that a further purpose of punishment is “to denounce the conduct of the offender”.*

30. An example of how the principle of proportionality operates is also found in **Veen v The Queen (No 2)**, *supra* where the High Court of Australia held that a sentence should not be increased merely to protect the community from further offending by the offender if the result of which would be a disproportionate sentence. In that case Mason CJ, Brennan, Dawson and Toohey JJ made the following useful observations at [473]:

*It is one thing to say that the principle of proportionality precludes the imposition of a sentence extended beyond what is appropriate to the crime merely to protect society; it is another thing to say that the protection of society is not a material factor in fixing an appropriate sentence. The distinction in principle is clear between an extension merely by way of preventive detention, which is impermissible, and an exercise of the sentencing discretion having regard to the protection of society among other factors, which is permissible.*

31. Lamer CJ in the Canadian Supreme Court in **The Queen v CAM**<sup>6</sup> found that retribution in sentencing represents:

*...an objective, reasoned and measured determination of an appropriate punishment which properly reflects the moral culpability of the offender, having regard to the intentional risk-taking of the offender, the consequential harm caused by the offender, and the normative character of the offender’s conduct.*

32. Howie J in the Court of Criminal Appeal of NSW in **R v Zamagias**<sup>7</sup> made the following useful observations on the interaction of the various sentencing purposes and how the advancement of one purpose may achieve the goal of another:

*It is perhaps trite to observe that, although the purpose of punishment is the protection of the community, that purpose can be achieved in an appropriate case by a sentence designed to assist in the rehabilitation of the offender at the expense of deterrence, retribution and denunciation...*

33. In light of the above, the court finds that all of the purposes of sentencing would need to be considered and balanced against each other to reach a sentence which conforms with the fundamental sentencing principle of proportionality. No one purpose has

---

<sup>6</sup> [1996] 1 SCR 500 at [80]

<sup>7</sup>[2002] NSWCCA 17 at [32]



priority over the other. The amount of weight that would be given to each purpose would depend on the circumstances of the offending, mitigating and aggravating factors, and the personal circumstances of the offender.

## CONSIDERATION

34. Having considered the various sentencing principles, the court will now consider the applicable factors in its sentencing, and apply them to the sentencing principles. In doing so the court has taken account of Section 279 of the *Crimes Act 2016*.
35. The court takes into consideration that the offending caused emotional injury to the people of Nauru.
36. The court condemns the offending conduct of the defendant. The national flag of Nauru symbolizes the knowledge, values, history and memories associated with Nauru, which is inherent to the identity of the citizens of Nauru. There is a need to protect the national flag of Nauru from any form of intentional desecration. The court will not take the intentional desecration of the national flag of Nauru lightly.
37. The court has considered Section 280 of the *Crimes Act 2016*. In light of the objective seriousness of the offence, the court finds that a term of imprisonment would be an appropriate sentence. The court is mindful of the fact that the defendant is a foreign national. Given the circumstances of the offending, the personal circumstances of the defendant, and the mitigating factors in his favor, an immediate custodial sentence would not be appropriate. Therefore, the court would suspend the sentence for a reasonable period of time.
38. In light of the fact that the court would impose a suspended sentence on the defendant, the court finds that an appropriate order for a fine against the defendant is to be made as a deterrent.
39. The court has considered Section 281 of the *Crimes Act 2016*. The means of the defendant was ascertained. Further, the court has considered the burden that would be placed on the defendant if an excessive amount of fine is imposed on him. The court also notes that other factors may also be taken into account when determining the means of a person, that is, payment by a third party: see *St Clare v. Wilson* (1994) S.L.T. 564.
40. The court has taken into consideration of the fact that the defendant was employed by the Taiwan Technical Mission in Nauru, and that the offending occurred during the course of his employment.
41. The defendant is not a notorious and/or high-profile offender. Therefore, the principle of general deterrence does not apply to him.

42. Further, the defendant does not have any prior criminal record. A prior criminal record may require more weight be given to retribution, personal deterrence or protection of the community, as such criminal record may manifest a continuing attitude of disobedience: See **Veen v The Queen (No 2)**, *supra*. In light of this, there is no need for specific or personal deterrence in this case.

## CONVICTION

43. The court has considered Section 279 of the **Crimes Act 2016**.
44. In light of the serious nature of the offending, the court enters a record of conviction against the defendant pursuant to Section 277(b) of the **Crimes Act 2016**.

## SENTENCE

45. Upon careful consideration of the sentencing principles, and the relevant factors in relation to the nature of the offending, the court finds that the appropriate sentence in this case is a term of imprisonment and a fine.
46. In light of the objective seriousness of the offending, the court starts with a starting point of 2 years imprisonment. Having considered the aggravating and mitigating factors in relation to the offending, the term of imprisonment is reduced to 1 year 6 months.
47. The defendant pleaded guilty at the earliest possible time. This saved the court's time and resources. For this the defendant is entitled to a 1/3 reduction from his term of imprisonment. Therefore, the term of imprisonment is further reduced to 1 year.
48. The term of imprisonment shall be suspended for a period of 2 years with effect from the date of this ruling. If the defendant reoffends within the period of suspension then the term of imprisonment for 1 year shall be activated against him.
49. The maximum fine that may be imposed under Section 18(2) of the Act is \$100,000. The District Court may impose a fine not exceeding \$50,000. Having considered the nature of offending, the circumstances of the offending, and the need to protect the national flag of the Republic of Nauru an order for the payment of a fine of \$30,000 is made against the defendant, which in the circumstances is at the lower end of the range of fine that may be imposed on the defendant.

## **ORDERS**

50. The following are orders of this court:

- i. That a record of conviction is entered against the defendant, namely, Ruei-Yang Huang.
- ii. That the defendant is sentenced to a term of imprisonment for 1 year, which shall be suspended for a period of 2 years with effect from the date of this ruling. If the defendant re-offends during the period of suspension then the said term of imprisonment shall be activated against him.
- iii. That the defendant is to pay a fine of \$30,000 within one month from the date of this ruling.
- iv. That the parties to this case are at liberty to appeal the defendant's sentence within 21 days from the date of this ruling.

Dated this 3 day of April 2024.

---

Resident Magistrate  
Vinay Sharma