



**DATE OF SENTENCING:** 26 September 2025

**APPEARANCE:**

**PROSECUTION:** M Suifa'asia

**DEFENDANTS:** R Tagivakatini

## **SENTENCE**

### **INTRODUCTION**

1. R.B. (“the Second Defendant”), Modug-dug Momaran Spanner (“the Third Defendant”), and L.D. (“the Fourth Defendant”) pleaded guilty to one count each for drinking alcohol while travelling on a public road as passengers in a vehicle contrary to section 17(1)(b) of the *Naoero Roads Act 2017*. I am to sentence them for it.
2. The facts surrounding the offending and the personal circumstances of the Second, Third, and Fourth Defendants are undisputed, and there are no disputes about the issues I am to determine under section 279 of the *Crimes Act 2016*. Furthermore, there is no dispute about the sentencing principles to be applied. Therefore, the issues before me for determination are:
  - i. Should the Second, Third, and Fourth Defendants be convicted as charged?
  - ii. What is the objective seriousness of the offending?
  - iii. What is the sentencing range?
  - iv. Whether a custodial sentence is appropriate in the circumstances?
  - v. Whether a record of conviction is to be entered against the Second, Third, and Fourth Defendants?
  - vi. What is the appropriate sentence to be handed down to the Second, Third, and Fourth Defendants?
3. The following are my reasons for the sentence.

### **FACTS SURROUNDING THE CIRCUMSTANCES OF THE OFFENCE**

4. The Second, Third, and Fourth Defendants live in Buada District.
5. The First Defendant also lives in Buada District.
6. On 3 May 2025, the First Defendant was driving a Black Harrier Sedan registration number “TT1394”. He picked the Second, Third, and Fourth Defendants from Buada District.

7. The Second, Third, and Fourth Defendants were drinking alcohol while they were travelling as passengers in the Black Harrier.

**PERSONAL CIRCUMSTANCES OF THE DEFENDANT**

8. Second Defendant's personal circumstances are:
  - i. He is 17 years old and is single.
  - ii. He dropped out of school last year and started working for RONPHOS. He worked for 4 months only and, since then, has been unemployed.
  - iii. He lives with his mother in Buada District. She is a single mother. She was previously employed but had to leave her job due to illness. She relies on her rental income and support from family.
  - iv. He helps his mother whenever his mother is unwell.
9. Third Defendant's personal circumstances are:
  - i. He is 19 years old and is single.
  - ii. He lives with his grandmother, his uncles and his cousins. His mother passed away when he was 15 years old. He does not know his father. His aunts also support him.
  - iii. He dropped out of school when his mother passed away.
  - iv. He is unemployed. He stays home and helps his elderly grandmother.
10. Fourth Defendant's personal circumstances are:
  - i. He is 17 years old and is single.
  - ii. He lives with his mother. He has four siblings, and he is the second-oldest.
  - iii. His parents separated when he was 5 years old. From the date his parent separated, he was with his mother. However, he accompanied his mother, together with his siblings, to Fiji for studies. Upon their return, he lived with his father for two years. During his time with his father, he stopped going to school and made new friends. He started smoking and drinking alcohol at a young age due to peer pressure.
  - iv. He is unemployed.

### **AGGRAVATING FACTORS**

11. I find that the only aggravating factor that applies to the First, Second, and Third Defendants collectively is that they engaged in underage alcohol consumption in contravention of section 39 of the *Liquor Control Act 2017*.

### **MITIGATING FACTORS**

12. I find that the following mitigating factors apply to the Second and Third:
- i. There is a high chance that they will rehabilitate.
  - ii. They are remorseful.
  - iii. They are young offenders.
  - iv. They are first-time offenders.
  - v. They pleaded guilty at the earliest possible time available to them.
13. I find that the following mitigating factors apply to the Fourth Defendant:
- i. There is a high chance that they will rehabilitate.
  - ii. They are remorseful.
  - iii. They are young offenders.
  - iv. They pleaded guilty at the earliest possible time available to them.

### **SHOULD THE SECOND, THIRD, AND FOURTH DEFENDANTS BE CONVICTED AS CHARGED?**

14. Section 190(4) of the Criminal Procedure Act 1972 provides as follows:

*Where the Court has recorded a finding under this Section that an accused is guilty of the offence charged, it shall, after hearing him or her, or his or her legal practitioner if any, as to any mitigating circumstances and any evidence thereof which may be advanced, either convict him or her and pass sentence on, or make an order against, him or her in accordance with the law or, if authorised by any written law to do so, discharge him or her without proceeding to conviction.*

15. I am not satisfied that there is any material before me that would justify a finding that the Second, Third, and Fourth Defendants should not be convicted as charged.

Therefore, I convict them as charged.

#### **WHAT IS THE OBJECTIVE SERIOUSNESS OF THE OFFENDING?**

16. The Second, Third, and Fourth Defendants are young, and they have a deprived upbringing. As a result, I find that their moral culpability is low. In light of their personal circumstances, aggravating and mitigating circumstances, and their moral culpability, I find that the objective seriousness of the current offending is at the lower range of the level of seriousness.

#### **WHAT IS THE SENTENCING RANGE?**

17. The maximum penalty for offences under section 17(1) of the *Naeoro Roads Act 2017* is a fine not exceeding \$5000 or a term of imprisonment up to 12 months or both.
18. There are insufficient case authorities to establish a sentencing range for the offences to use them as a yardstick.

#### **SENTENCING APPROACH AND PRINCIPLES**

19. 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.*

20. Section 279 of the *Crimes Act 2016* outlines the considerations that the court must consider when sentencing a person found guilty of an offence. The considerations under this section stems from Section 278 of the *Crimes Act 2016*.
21. Section 280 of the *Crimes Act 2016* provides the sentencing considerations that must be considered when deciding whether a term of imprisonment is appropriate.
22. Section 281 of the *Crimes Act 2016* provides the considerations that the court must consider as far as possible when deciding to impose a fine on a person found guilty of an offence.

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

24. 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>

25. Further, the High Court of Australia in *Muldrock 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.]*

26. Having referred to the cases above on the application of the purposes for sentencing, I now emphasize 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

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

<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]

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 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”.*

27. 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.*

28. 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.*

29. 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*

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

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

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

*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...*

30. In light of the above, I find 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 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 offender's personal circumstances.

#### **WHETHER A RECORD OF CONVICTION IS TO BE ENTERED AGAINST THE SECOND, THIRD, AND FOURTH DEFENDANTS?**

31. I have considered Sections 277 (a) and (b) of the *Crimes Act 2016*. The Second, Third, and Fourth Defendants are first-time young offenders. A record of conviction may affect their future endeavours, and given the objective seriousness of their offending, it would not be appropriate to record a conviction against them. Therefore, convictions would not be recorded against the Second, Third, and Fourth Defendants accordingly.

#### **IS A CUSTODIAL SENTENCE APPROPRIATE?**

32. I have considered section 280 of the *Crimes Act 2016*. I have also considered the circumstances of the current offending and find that a term of imprisonment is not an appropriate sentence for the Second, Third, and Fourth Defendants.

#### **WHAT IS THE APPROPRIATE SENTENCE TO BE HANDED DOWN TO THE SECOND, THIRD, AND FOURTH DEFENDANTS?**

33. I have considered the various sentencing principles, applicable factors and circumstances of this case, including Section 279 of the *Crimes Act 2016*.
34. The Second and Third Defendants do not have any prior criminal record. There is no need for specific or personal deterrence in relation to them. Furthermore, they pleaded guilty at the earliest opportunity. However, the Fourth Defendant pleaded guilty to being in unlawful possession of 0.6grams of cannabis, an illicit drug, contrary to section 6 of the Illicit Drugs Control Act 2004. There is a need for specific or personal deterrence in relation to the Fourth Defendant.
35. I have considered the financial circumstances of the Second, Third, and Fourth Defendants. I have also taken into account the financial circumstances of their families. I believe that a fine would not be an appropriate sentence in these circumstances.
36. Section 22 of the *Criminal Justice Act 1999* allows the court to make an order for community service against a person above the age of 13 who has been found guilty of an offence punishable by imprisonment. Therefore, the Second and Third Defendants are required to perform community service for 2 hours every Saturday for a period of 6

months, commencing from 4 October 2025. On the other hand, I am increasing the period of community service for the Fourth Defendant to 9 months as specific or personal deterrence.

37. Section 25 of the **Criminal Justice Act 1999** provides for the content of a community service order. I have considered Section 25 and make orders accordingly.
38. Section 7(1), 8(1) and 11(1) of the **Criminal Justice Act 1999** are relevant in relation to a probation order that would be made in the current circumstances. Section 7(1) of the Criminal Justice Act 1999 provides that “where a person is **convicted** of an offence punishable by imprisonment the court may, instead of sentencing him or her to imprisonment, make a probation order releasing the person on probation for a period specified in the order, being a period of not less than 1 year nor more than 3 years”.
39. The term convicted has been interpreted by the courts flexibly. In **HA & SB v The Director of Public Prosecutions**<sup>8</sup> the Supreme Court of New South Wales made the followings observation at [9] of its judgment with regard to the interpretation of the term convict:

*9 The words “convict” and “conviction” are not words of constant meaning with universal application. In Maxwell v The Queen (1996) 184 CLR 501 at 507, Dawson and McHugh JJ said:*

*“The question of what amounts to a conviction admits of no single, comprehensive answer. Indeed, the answer to the question rather depends upon the context in which it is asked. On the one hand, a verdict of guilty by a jury or a plea of guilty upon arraignment has been said to amount to a conviction. On the other hand, it has been said that there can be no conviction until there is a judgment of the court, ordinarily in the form of a sentence, following upon the verdict or plea.”*

*and reference was made to Burgess v Boetefeur (1844) 7 Man & G 481 at 504, 135 ER 193 at 202, R v Tonks [1963] VR 121 at 127-8, R v Jerome and McMahon [1964] Qd R 595 at 604 and Richards v The Queen (1993) AC 217 at 226-7.*

40. Section 65 of the **Interpretation Act 2011** defines “conviction” as “a finding of guilt by a court, whether or not the conviction is recorded”. In the current context, the term “convicted” must be interpreted to mean “a finding of guilt by a court, whether or not conviction is recorded”. This interpretation was adopted in the Supreme Court of Nauru in **Republic v BR**<sup>9</sup>. This court is bound by the Supreme Court’s interpretation in that matter.

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<sup>8</sup> [2003] NSWSC 347

<sup>9</sup> Supreme Court Criminal Case No. 3 of 2024

41. The probation of 1 year is to commence upon the expiry of the community service order.
42. I make an order for six months and nine months of community service and one year of probation in the current circumstances because drinking while driving and/or drinking while travelling as a passenger is prevalent in Nauru, and there is a need to protect the public, especially young children who use the roads.

## **ORDERS**

43. I make the following orders:
  1. That convictions are not recorded against R.B., Modug-dug Momaran Spanner, and L.D..
  2. That a community service order is made against R.B. and Modug-dug in the following terms:
    - i. That R.B. and Modug-dug are to carry out two hours of community service every Saturday on a weekly basis commencing from 4 October 2025 for a period of 6 month.
    - ii. That R.B. and Modug-dug are to report to the Chief Probation Officer on 1 October 2025 at 2.30 pm.
    - iii. The Chief Probation Officer shall give necessary directions on the community service to be undertaken.
  3. That a community service order is made against L.D. in the following terms:
    - i. That L.D. is to carry out two hours of community service every Saturday on a weekly basis commencing from 4 October 2025 for a period of 9 month.
    - ii. That L.D. is to report to the Chief Probation Officer on 1 October 2025 at 2.30 pm.
    - iii. The Chief Probation Officer shall give necessary directions on the community service to be undertaken.
  4. That a probation order is made against R.B., Modug-dug Momaran Spanner, and L.D. for a period of 1 year, effective from the date of the expiration of their community service order. The conditions of the probation order are as follows:
    - i. That R.B., Modug-dug, and L.D. shall report in person to the Chief Probation Officer under whose supervision they are placed at a time provided by the Chief Probation Officer after the expiry of the

community service order, and shall further report as and when they are required to do so by the Chief Probation Officer;

- ii. That R.B., Modug-dug, and L.D. shall reside at their current place of residence and give to the Chief Probation Officer reasonable notice of their intention to move from their current place of residence;
- iii. That R.B., Modug-dug, and L.D. shall not reside at an address that is not approved by the Chief Probation Officer;
- iv. That R.B., Modug-dug, and L.D. shall not continue in an employment, or continue to engage in an occupation that is not approved by the Chief Probation Officer;
- v. That R.B., Modug-dug, and L.D. shall not associate with a specified person, or with persons of a specified class, with whom the Chief Probation Officer has, in writing, warned them not to associate; and
- vi. That R.B., Modug-dug, and L.D. shall keep the peace, be of good behaviour and commit no offence against the law.

5. That the parties are at liberty to appeal this sentence within 21 days.

Dated this 26<sup>th</sup> day of September 2025.



Resident Magistrate  
Vinay Sharma

