



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

Criminal Case No. 22 of 2025

**BETWEEN: THE REPUBLIC OF NAURU**

**PROSECUTION**

**AND: FREDDY TOKATAAKE**

**1<sup>st</sup> DEFENDANT**

**AND: T.R.**

**2<sup>nd</sup> DEFENDANT**

**BEFORE: Resident Magistrate Mr Vinay Sharma**

**DATE OF HEARING: 22 September 2025**

**DATE OF SENTENCING: 26 September 2025**

**APPEARANCE:**

**PROSECUTION: M Suifa'asia**

**DEFENDANTS: S Hazelman**

# SENTENCE

## INTRODUCTION

1. Freddy Tokataake and T.R. pleaded guilty to one count of unlawful possession of 0.6grams of cannabis, an illicit drug, contrary to section 6 of the Illicit Drugs Control Act 2004. I am to sentence them for it.
2. The facts surrounding the offending and the personal circumstances of Freddy and T.R. 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 Freddy and T.R. be convicted as charged?
  - ii. What is the objective seriousness of the offending?
  - iii. What is the sentencing range?
  - iv. How do the amended sections 6 and 50 of the Illicit Drugs Control Act 2004 apply to juvenile offenders?
  - v. Whether a record of conviction is to be entered against Freddy and T.R.?
  - vi. What is the appropriate sentence to be handed down to Freddy and T.R.?
3. The following are my reasons for the sentence.

## FACTS SURROUNDING THE CIRCUMSTANCES OF THE OFFENCE

4. Freddy was 18 years old at the time of the offence.
5. T.R. was 16 years old at the time of the offence.
6. On 6 May 2025, police received a report that juveniles were smoking cannabis in a rundown grey vehicle (“the Vehicle”) situated at the Location compound. Police attended to the report.
7. Before the report was made, Freddy went to the Vehicle and sat on the back seat. He had a pack of cigarettes and his phone. He found a small plastic pack containing cannabis leaves in the middle of the car. He called T.R. to join him in the car.
8. Freddy poured the cannabis leaves onto his phone’s cover. He saw a bottle that was used for smoking cannabis. Just as Freddy and T.R. were about to smoke the cannabis, the police arrived at the Vehicle. Freddy quickly poured the cannabis onto his hands and threw it out of the car.

9. Senior Constable Nelson Dageago was the first officer to reach the Vehicle. He opened the door and saw Freddy throw out a cigarette from the vehicle. He also saw shredded green leaves spread out on a piece of cardboard on the ground. He collected the green leaves and placed them in a small plastic bag for investigation.

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

10. Freddy's personal circumstances are:
  - i. He is 18 years old and is single.
  - ii. He has a female sibling.
  - iii. His father passed away in 2010. His mother had difficulties raising him and his sister because she was not Nauruan. During that period of time, they lived with his father's family in Boe District.
  - iv. A few years later, his mother entered into another relationship and moved to her de facto partner's residence.
  - v. He stayed with his father's family with his sister. Later, his sister entered into a relationship and moved in with her de facto partner in Location. He then alternated living with his sister in Location and his father's family.
  - vi. He helps support his family by going fishing.
  - vii. He does not drink alcohol but has a history of cannabis use.
11. Third Defendant's personal circumstances are:
  - i. He is 17 years old and is in a de facto relationship. He has a 2-month-old daughter from the de facto relationship. His partner gave birth whilst he was in remand custody.
  - ii. He has seven siblings. He is the third child.
  - iii. His father passed away in 2023. His mother struggled to support him and his siblings. Earlier this year, he dropped out of school to do casual work for Chinese business owners.
  - iv. Before being remanded, he supported his de facto partner.

#### **AGGRAVATING FACTORS**

12. I find that the only aggravating factor that applies to Freddy is that he was going to

smoke cannabis at a place that is accessible to the public and that he encouraged T.R., who is a juvenile, to smoke cannabis.

13. Concerning T.R., I find that the only aggravating factor that applies to him is that he was going to smoke cannabis at a place that is accessible to the public.

#### **MITIGATING FACTORS**

14. I find that the following mitigating factors apply to Freddy and T.R.:
- 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.

#### **SHOULD FREDDY AND T.R. BE CONVICTED AS CHARGED?**

15. 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.*

16. I am not satisfied that there is any material before me that would justify a finding that Freddy and T.R. should not be convicted as charged. Therefore, I convict them as charged.

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

17. Freddy and T.R. are young first-time offenders and are immature. 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 severity.

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

18. Section 6 of the *Illicit Drugs Control Act 2004* provides that “a person who, without lawful authority, possesses any illicit drug commits an offence and is liable on

*conviction to a term of imprisonment of not less than 12 months but not exceeding 3 years.”*

19. Section 6 of the Illicit Drugs Control Act provides a mandatory sentence for the offence of unlawful possession of illicit drugs. The amendments were made recently.

## **SENTENCING APPROACH AND PRINCIPLES**

20. 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.*

21. 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*.
22. Section 280 of the *Crimes Act 2016* provides the sentencing considerations that must be considered when deciding whether a term of imprisonment is appropriate.
23. 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.
24. 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.*

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

25. 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>

26. 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.]*

27. 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 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*

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<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]

*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”.*

28. 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.*

29. 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.*

30. 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...*

31. 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

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

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

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 FREDDY AND T.R.?**

32. I have considered Sections 277 (a) and (b) of the *Crimes Act 2016*. For Freddy, a mandatory term of imprisonment is required by law. Therefore, a conviction is to be recorded for Freddy. However, for T.R., the amendments to sections 6 and 50 of the *Illicit Drugs Control Act 2004* apply differently to him because he is a “child” as per the *Child Protection and Welfare Act 2016*. I have considered all the circumstances relating to him. He is a juvenile, and a conviction record will impact his future endeavours. The objective seriousness of the offending is low. Therefore, I will not record a conviction against T.R..

#### **HOW DO THE AMENDED SECTIONS 6 AND 50 OF THE ILLICIT DRUGS CONTROL ACT 2004 APPLY TO JUVENILE OFFENDERS?**

33. The *Child Protection and Welfare Act 2016* is an enactment that specifically protects the rights of children. The preamble of the *Child Protection and Welfare Act 2016* states explicitly that it is “*an Act to provide for the welfare, care and protection of all children in the Republic and for the enforcement of the rights of children as provided for by international conventions, norms and standards, while taking account of Nauruan culture, traditions and values, and for related purposes.*”

34. Section 48 of the *Child Protection and Welfare Act 2016* provides as follows:

##### ***Criminal punishments applying to children***

*Notwithstanding the provision of any other written law to the contrary, the following apply to any criminal proceedings taken against a child:*

*(a) no child may be sentenced to death or to imprisonment for life under any written law act and for any offence; and*

*(b) a sentence of imprisonment may only be imposed against a child as a sentencing option of last resort.*

35. Sections 6 and 50 of the *Illicit Drugs Control Act 2004* were amended in 2024 and later consolidated.
36. Section 6 of the *Illicit Drugs Control Act 2004* has been quoted at [19] of this sentencing.
37. Section 50 of the *Illicit Drugs Control Act 2004* provides as follows:

##### ***Provisions of Crimes Act 2016***

*Section 277(b), (c), (d) and (e) of the Crimes Act 2016 shall not apply to any offence committed or for the purpose of sentencing under this Act.*

38. Section 277 of the **Crimes Act 2016** provides as follows:

***Kinds of sentences***

*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*

*following:*

*(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) impose any other sentence or make any order that is authorised by this or any other written law of Nauru.*

39. The effect of sections 6 and 50 of the **Illicit Drugs Control Act 2004** is that it takes away the court's sentencing discretion. However, the amendments are general provisions and/or enactments of general application.

40. The Privy Council in **Barker v Edger and Others** [1895-99] All ER Rep Ext 1642 at page 1646 made the following observations concerning conflict between the provisions of two separate legislations:

*The general maxim is, Generalia specialibus non derogant. When the Legislature has given its attention to a separate subject and made provision for it, the presumption is that a subsequent general enactment is not intended to interfere with the special provision unless it manifests that intention very clearly. Each enactment must be construed in that respect according to its own subject-matter and its own terms.*

41. Further, Viscount Cave in the House of Lords in **Blackpool Corporation v Starr Estate Co, Ltd** [1921] All ER Rep 79, at page 84, also made the following observations with regard to conflict between the provisions of two separate legislations:

*The rule is clear that a general statute will not, in the absence of clear words, be construed as derogating from special provisions in a previous statute. Generalia specialibus non derogant, and when the legislature has given its attention to a particular subject and made provision for it, the presumption is that a subsequent and general enactment is not intended to interfere with the special provision unless the intention so to do is clearly manifested: see the*

*rule as stated by LORD HOBHOUSE in Barker v Edger (1).*

42. It is clear that the ***Child Protection and Welfare Act 2016*** is a specific enactment for the protection of the rights of Nauruan children. Furthermore, section 48(b) of the ***Child Protection and Welfare Act 2016*** explicitly relates to the sentencing of a “child” as per its provisions, which specifically requires that a term of imprisonment be an option of last resort for a court exercising sentencing powers. This involves the exercise of discretion.
43. Sections 6 and 50 of the ***Illicit Drugs Control Act 2004*** require a mandatory term of imprisonment and have removed the discretionary powers of the court when sentencing a person for offences under the ***Illicit Drugs Control Act 2004***. The two provisions are general in nature regarding the sentencing power of the courts.
44. There is an apparent conflict between sections 6 and 50 of the ***Illicit Drugs Control Act 2004*** and section 48(b) of the ***Child Protection and Welfare Act 2016***. However, sections 6 and 50 of the ***Illicit Drugs Control Act 2004*** do not, in clear terms, specify that the amendments apply to the sentencing of juveniles as well. In this instance, the general maxim ***Generalia specialibus non derogant*** applies. Therefore, I find that the general provisions of sections 6 and 50 of the ***Illicit Drugs Control Act 2004*** do not implicitly repeal the specific provisions of section 48(b) of the ***Child Protection and Welfare Act 2016***.
45. The conflict between the two needs to be resolved by interpreting sections 6 and 50 of the ***Illicit Drugs Control Act 2004*** in harmony with section 48(b) of the ***Child Protection and Welfare Act 2016***. Therefore, in relation to a person below the age of 18 years:
  - i. Section 6 ***Illicit Drugs Control Act 2004*** would need to be interpreted as providing the court the discretion to impose a term of imprisonment up to 3 years. The mandatory minimum of one year would not apply; and
  - ii. Section 50 of the ***Illicit Drugs Control Act 2004*** will not apply.
46. The Supreme Court of Nauru in ***Republic v ERJ*** [2023] NRSC 2 and ***Republic v BR*** [2024] NRSC, without having to refer to the maxim ***Generalia specialibus non derogant***, has found that a conflict between the ***Child Protection and Welfare Act 2016*** and any other Act is to be resolved in favour of the provisions of the pursuant to section 6 of the ***Child Protection and Welfare Act 2016***. I am bound by the decisions of the Supreme Court. Therefore, I apply the above interpretation at [46].

#### **WHAT IS THE APPROPRIATE SENTENCE TO BE HANDED DOWN TO FREDDY AND T.R.?**

47. I have considered the various sentencing principles, applicable factors and circumstances of this case, including Section 279 of the ***Crimes Act 2016***.

48. Freddy and T.R. 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.
49. In Freddy’s case, I am to impose a mandatory term of imprisonment between 1 and 3 years. I have considered the personal circumstances, the mitigating and aggravating factors, and the objective seriousness of the offence. I find that a one-year term of imprisonment would be appropriate in light of the circumstances surrounding his offence. Further, time spent in remand would be deducted from the one-year term of imprisonment. The defendant was remanded in custody on 13 June 2025. Therefore, a period of 104 days would be deducted from his one-year term of imprisonment.
50. Concerning T.R., I have considered section 280 of the *Crimes Act 2016*. I have also considered the circumstances surrounding his offence and find that a term of imprisonment is not an appropriate sentence for him.
51. 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, I find that community service is appropriate for T.R..
52. There has been an increase in cases of unlawful possession of cannabis by juveniles. To ensure sufficient deterrence, longer hours of community services would be ordered. Therefore, T.R. is required to provide 5 hours of community service every Saturday for a period of six months, commencing from October 4, 2025.
53. 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.
54. 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”.
55. The term convicted has been interpreted by the courts flexibly. In *HA & SB v The Director of Public Prosecutions*<sup>9</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*

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<sup>9</sup> [2003] NSWSC 347

*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.*

56. 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.
57. I will also impose a more extended period of probation to ensure deterrence. Therefore, a probation order for 2 years shall be imposed against T.R., and it is to commence upon the expiry of the community service order.

## **ORDERS**


58. I make the following orders:
1. That a conviction is recorded against Freddy Tokataake.
  2. That Freddy is to serve a term of imprisonment for 261 days.
  3. That a conviction is not recorded against T.R..
  4. That a community service order is made against T.R. in the following terms:
    - i. That T.R. is to carry out five hours of community service every Saturday on a weekly basis commencing from 4 October 2025 for a period of 6 months.

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

- ii. That T.R. 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.
5. That a probation order is made against T.R. for a period of two years, effective from the date of the expiration of the community service order. The conditions of the probation order are as follows:
  - i. That T.R. shall report in person to the Chief Probation Officer under whose supervision he is 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 he is required to do so by the Chief Probation Officer;
  - ii. That T.R. shall reside at his current place of residence and give to the Chief Probation Officer reasonable notice of his intention to move from his current place of residence;
  - iii. That T.R. shall not reside at an address that is not approved by the Chief Probation Officer;
  - iv. That T.R. shall not continue in an employment, or continue to engage in an occupation that is not approved by the Chief Probation Officer;
  - v. That T.R. shall not associate with a specified person, or with persons of a specified class, with whom the Chief Probation Officer has, in writing, warned him not to associate; and
  - vi. That T.R. shall keep the peace, be of good behaviour and commit no offence against the law.
6. That T.R. is to be released from remand custody forthwith.
7. That the parties are at liberty to appeal this sentence within 21 days from 26 September 2025.

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



Resident Magistrate  
Vinay Sharma

