



IN THE SUPREME COURT OF NAURU
AT YAREN
[CRIMINAL JURISDICTION]

Criminal case No. 04 of 2022

BETWEEN: THE REPUBLIC

PROSECUTION

AND: FOREMAN ROLAND

ACCUSED

Before: Keteca J

Date of Sentencing Submissions: 17th & 27th November 2023

Date of Sentencing: 01st December 2023

Case may be cited as: *Republic v Roland*

CATCHWORDS: Causing harm to a Police Officer; section 77 Crimes Act 2016; communicate society's condemnation of the particular offender's conduct, sentence represents "a symbolic, collective statement that the offender's conduct should be punished

APPEARANCES:

Counsel for the Prosecution: Ms. F. Puleiwai

Counsel for the Accused: Mr. R. Tom

SENTENCE

Introduction

1. You were found guilty of the offence: Causing Harm to a Police Officer: Contrary to Section 77(a)(b)(c) and (ii) of the Crimes Act 2016.

- You were arrested by the police on a report by your mother of being drunk and causing a disturbance. You had also damaged some property. After you were arrested, you ran away. Two police officers pursued you on foot. Senior Constable Jehu Ageidu caught up to you. You resisted his efforts to apprehend you. You hit him on his face and chest. You knew that he was a police officer. In your struggles and resistance, you uttered- **“Let go of me, I’ll break your face.”** The police officer, Jehu Ageidu suffered harm. The doctor that examined him noted- “3 x notable bruises extending from the mid right clavicle to the anterior edge of the neck.” The doctor added- “a case of assault from an apprehended suspect to the police officer.”
- “the police officer sustaining minor bruises as a result – force was dangerous - potential to have caused internal injury/choking.”

Maximum Sentence

2. An offence under section 77(a)(b)(c) and (ii) of the Crimes Act 2016 carries a maximum sentence of 20 years imprisonment. The provision adds that at least one third of the imprisonment term is to be served without parole or probation.

Sentencing Submissions

3. Counsel for the prosecution filed helpful submissions as follows:

- This is a very serious offence that warrants “a very severe imprisonment term”;

- This is the first case since the 23rd October 2020 amendment of the penalty provision under section 77 of the Crimes Act 2016 (Causing Harm to a Police Officer), which increased the penalty from 8 years imprisonment to 20 years;
- The “amendment was introduced due to the rise in assaults against police officers while they were on duty”;
- The then Minister for Justice, Hon. Maverick Eoe MP had submitted in Parliament – “Sir, whilst on the subject of the protection of the society, I may further add that the Nauru Police Force is at the forefront of community protection and enforcement of the laws. However, **there have been many instances** where they have not been spared. They have been threatened or actually physically assaulted. Such irresponsible behaviour from the offenders does not assist the Police in collating all the evidence to ensure that that crimes committed under our laws are actually prosecuted”;
- The accused has a history of violence against other people;
- The minimum “floor/ceiling” is 6 years and 7 months;
- The sentence should be a “deterrent to like- minded offenders”;
- The offender has a previous conviction – District Court criminal case no. 12/2021- Section 75(a)(b)(c)(ii) of the Crimes Act 2016 (Recklessly Causing Harm), where he was sentenced on 14th November 22 to fourteen months imprisonment. Six months of the term was suspended for two years;
- The accused is 31 years old; and
- The victim is a senior police officer and was on duty. The level of culpability is on the high end.

4. The representation of the accused in this case illustrated clearly that those that are new to the legal profession should be guided by senior counsels for several years before they are given briefs to appear on their own. In particular, to represent clients in offences that carry hefty penalties. The court reminded counsel in court that even if legal representation is being offered *pro bono*, the court still expects that proper and thorough legal research are undertaken in the substantive law and in the carriage of the matter. This will ensure that the spirit of the fundamental right of accused persons provided for under Article 10(3) of the Constitution are protected and observed.

Mitigation

5. Counsel for the accused submits as follows:
 - The accused is remorseful and has attended church services whilst on remand;
 - He has “recently started a family” :(there are no details as to when he got married. How many children does he have? How old are they?
 - “The defendant shows great recommendation in his new employment” (what does this mean?):
 - The original complainant, the accused’s mother “also wishes to forgive him”: (the court notes that this is not reflected in the mother’s affidavit)
 - The court to consider a lenient sentence.
6. The accused’s mother filed an affidavit in mitigation. She lives in Aiwo. She relies on him to support their family of 6 females and 3 males. She seeks a lenient sentence for the accused.
7. The wife is unemployed. She lives with her family in Meneng. She relies on her husband to “provide financial support.” She also seeks a lenient sentence for her husband.

Kinds of Sentences under the Crimes Act 2016

8. Section 277 provides:

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 authorized by this or any other written law of Nauru.

Purposes of Sentencing

9. The purposes for sentencing provided under section 278 are:

- (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 recognize the harm done to the victim and the community.
10. The above provisions encapsulate the common law sentencing principles of deterrence, totality and parity.
11. The general sentencing considerations are set out in section 279.
12. The sentencing considerations for imprisonment are set out in section 280.
13. Section 281 provides for the sentencing considerations for fines.
14. The court has the power to reduce penalties under section 282. It provides:
- (1) Where, under this Act, an offender is liable to life imprisonment, a court may nevertheless impose a sentence of imprisonment for a stated term.
 - (2) Where, under this Act, an offender is liable to imprisonment for a stated term, a court may nevertheless impose a sentence of imprisonment for a lesser term.

Entering of Conviction

15. Considering the provisions of the Crimes Act 2016 above and the submissions from counsels, **I convict you accordingly.**

What is the appropriate sentence here?

16. This is a serious offence. Parliament amended the penalty provision of this offence in 2020. It increased the maximum penalty from 10 years to life imprisonment if aggravating circumstances apply, and from 8 years to 20 years imprisonment, in any other case.
17. I take into account sections 278 and 279 of the Crimes Act 2016. The court notes that section 279(1) provides that the court “shall impose a sentence...that is of a severity appropriate in all the circumstances of the offence”. This is the codification of the common law sentencing principle of proportionality.
18. I also consider Section 280 which provides: -

A sentence of imprisonment may be imposed on a person only if:

(a) In the opinion of the court:

- i. the person has shown a tendency to violence towards other people;
- ii. the person is likely to commit a serious offence if allowed to go at large;
- iii. the person has previously been convicted of an offence punishable by imprisonment;
- iv. any other sentence would be inappropriate having regard to the gravity or the circumstances of the offence; or
- v. the protection of the community requires it; or

(b) a sentence of imprisonment is necessary to give proper effect to Sections 278 and 279.

19. The court notes your previous conviction under section 75 of the Crimes Act 2016 of “Recklessly Causing Harm to another person.” The Magistrate noted in District Court criminal case no. 12/2021- at [8] – “...I found that using a knife to cause harm and entering twice to the private dwelling without consent at night was aggravating.” In that case, you were sentenced to fourteen months imprisonment. You served 8 months. Six months were suspended for two years.

20. You show a tendency to violence towards other people.

21. The court also considers the following matters under section 279(1) & (2) of the Crimes Act 2016: -

(a) Nature and circumstances of the offence- You were arrested by the police on a report by your mother of being drunk and causing a disturbance. You had also damaged some property. After you were arrested, you ran away. Two police officers pursued you on foot. Senior Constable Jehu Ageidu caught up to you. You resisted his efforts to apprehend you. You hit him on his face and chest. You knew that he was a police officer. In your struggles and resistance, you uttered - “Let go of me. I’ll break you face.”

...(d) any injury or loss resulting from the offence - “The police officer, Jehu Ageidu suffered harm. The doctor that examined him noted- “3 x notable bruises extending from the mid right clavicle to the anterior edge of the neck.” The doctor added - “a case of assault from an apprehended suspect to the police officer.” “the police officer sustaining minor bruises as a result – force was dangerous-potential to have caused internal injury/choking.”

...

(k) the deterrent effect that any sentence or order may have on the person or anyone else - Parliament increased the penalty provision for this offence because of the rise in assaults against police officers whilst they were on duty;

(l) the need to ensure the person is adequately punished for the offence.

18. The court refers to *Baumer v The Queen*¹ where the court, in a joint judgement said:

"[T]he sole criterion relevant to a determination of the upper limit of an appropriate sentence is that the punishment fit the crime. **Apart from the mitigating factors, it is the circumstances of the offence alone that must be determinant of an appropriate sentence.**"

19. Having considered all the available sentences, your tendency to violence towards other people, and to give proper effect to sections 278 and 279 of the Crimes Act 2016, **I am satisfied that a sentence of imprisonment is appropriate here.**

How long should you be imprisoned for?

20. Your counsel, your mother and wife have asked that the court be lenient in sentencing you.

21. In *Burgoyne v Dixon*² in a less serious offence of spitting at a police officer, Thomas J said - "Society depends upon police officers to maintain law and order. Such officers deserve the protection of the courts. It is in the interests of the whole community that police officers proceed in the execution of their sometimes very difficult and onerous duties without being subjected to this type of offending."

¹ (1988) 166 CLR 51 at 58

² [2004] NTSC 37

22. I agree with Mr Justice Thomas that police officers deserve the protection of the courts.

Denunciation

23. Parliament has increased the penalty provisions for this offence from 8 to 20 years imprisonment. This reflects the expectations of the Nauru society that persons that are convicted of causing harm to police officers, whilst executing their difficult and onerous duties, will be punished severely. This is reflected in section 278(f) of the Crimes Act on the purposes of sentencing- “to denounce the conduct of the offender.”

24. As stated by Kirby J in *Ryan v The Queen*³:

“A fundamental purpose of the criminal law, and of the sentencing of convicted offenders, **is to denounce publicly** the unlawful conduct of the offender. This objective requires that a sentence should **also communicate society’s condemnation of the particular offender’s conduct**. The **sentence represents “a symbolic, collective statement** that the offender’s conduct should be punished for encroaching on our society’s basic code of values as enshrined within the substantive criminal law.” (my emphasis)

Maximum Penalty

25. On the relevance of maximum statutory penalties, the High Court of Australia, in *Markarian v The Queen*⁴ said:

³ (2001) 206 CL.R 267 at 302

⁴ (2005) 228 CL.R 357

“Careful attention to maximum penalties will almost always be required, first because the legislature has legislated for them; secondly because they invite comparison between the worst possible case and the case before the court at the time; and thirdly, because in that regard they provide, taken and balanced with all relevant factors, a yardstick.”

26. I am mindful of the requirement under section 279(1) to impose a sentence “of a severity appropriate in all the circumstances of the offence.”

27. I am also mindful of *Hoare v The Queen*⁵, where the High Court of Australia stated:

“[A] basic principle of sentencing law is that a sentence of imprisonment imposed by a court should never exceed that which can be justified as appropriate or proportionate to the gravity of the crime considered in the light of its objective circumstances.”

28. I also note *Veen v The Queen (No 2)*⁶ where the majority said:

“The maximum penalty prescribed for an offence is intended for cases falling within the worst category of cases for which the penalty is prescribed.”

Where does the offending fall as regards the gravity of the crime?

29. In this regard, I again consider the circumstances of the offending. As stated in para [1] above-

“You were arrested by the police on a report by your mother of being drunk and causing a disturbance. You had also damaged some property. After you were arrested, you ran away. Two police officers pursued you on foot. Senior Constable Jehu Ageidu caught up to you. You resisted his efforts to apprehend you. You hit him on his face and chest. You knew that he was a police officer.

⁵ (1989) 167 C.L.R. 348

⁶ (1988) 164 C.L.R. 464 at 478

In your struggles and resistance, you uttered-“**Let go of me, I’ll break you face.**”

30. The court notes that you did not initially resist arrest. You did not challenge the police officers to a fight nor assault them as you were arrested. You asked for a Tee-shirt. You also asked for a cigarette. You then fled.
31. The harm caused to the police officer was during the struggle when you were resisting being apprehended. You hit the police officer on his face and chest. You both fell to the ground. You said-““**Let go of me, I’ll break your face.**” You were then restrained with the assistance of a second police officer.
32. Despite there being no aggravating circumstances in this assault, the court is mindful that you clearly intended to cause harm to the police officer. If the police officer was not assisted in your apprehension, you could and probably would have done more harm to him. Your intention was clear from the words that you used- “**Let go of me, I’ll break your face.**” In my assessment, your offending leans towards the higher end on the level of culpability.
33. **In this regard, your sentence will “communicate society’s condemnation” of assaults against police officers. It will “represent a symbolic, collective statement”, as legislated by parliament, that when one is convicted of intentionally causing harm to a police officer, the person will be sent to prison; for a long time.**

Taking all the above in their totality. **I sentence you to 108 months (nine years) imprisonment. Twenty-four months are suspended for three years.**

34. You were in remand for 9 months. This is deducted from your sentence of 84 months. **This brings your sentence to 75 months. (6 years 25 days)**
35. You have a sentence of six months which was suspended for two years on 14th November 2022, in District Court criminal case no. 12/2021.
36. I will now hear counsels as to why this sentence should be served as concurrent or consecutive to your current sentence.

37. Having heard counsels on this issue, I order that your six months suspended term in District Court criminal case no. 12/2021- not be activated

38. You will serve a total of 75months in prison.

DATED this 01st day of December 2023.


Kiniviliame T. Keteca
Judge

