



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

Criminal Case No. 06 of 2023

BETWEEN : **THE REPUBLIC**

PROSECUTION

AND : **CRAVEN DETABENE**

DEFENDANT

BEFORE: **Keteca J**

DATE OF SUBMISSIONS: **27th June 2024**

DATE OF SENTENCE: **03rd July 2024**

CASE MAY BE CITED AS: **Republic v Detabene**

CATCHWORDS: **Causing harm to a Police Officer; Section 77 Crimes Act
2016**

APPEARNCES:

COUNSEL FOR THE
PROSECUTION: **A. Driu**

COUNSEL FOR THE
ACCUSED: **V. Clodumar**

SENTENCE

BACKGROUND

1. Craven Detabene, on 26th April 2024, you were found guilty of one count of 'Drinking' contrary to section 17(1)(b) and 2 of the *Naoero Roads Act 2017* (Count 1) and one count of 'Causing Harm to a Police Officer' contrary to section 77(a)(b)(c) & (d) and (ii) of the *Crimes Act 2016* (Count 2).

MAXIMUM PENALTY

COUNT 1: 'Drinking'

2. Section 17(1)(b) and 2 of the *Naoero Act 2017* provides:
“(1) No person shall consume alcohol or any drugs:
(a) On a public road; or
(b) While travelling in a vehicle as a passenger or driver.

(2) **A person who contravenes subsection (1), commits an offence and upon conviction is liable to a fine not exceeding \$5,000 or to a term of imprisonment not exceeding 12 months or to both.**

COUNT 2: 'Causing Harm to Police Officer'

3. Section 77(a)(b)(c) & (d) and (ii) of the *Crimes Act 2016* ('the Act' provides:
“A person commits an offence, if:
(a) *the* person intentionally engages in conduct;
(b) the conduct causes harm to another person without the person's consent;
(c) the person intends to cause harm to the other because the person believes the other person is a police officer; and
(d) the other person is in fact a police officer.
Penalty;
(i) If aggravating circumstances apply- life imprisonment of which at least 12 years imprisonment to be served without parole or probation; or
(ii) **In any other case- 20 years imprisonment, of which imprisonment term at least one third to be served without parole or probation.**

ANTECEDENT

4. The defendant was born in 1974. He is 50 years old.
5. He is married with 06 children. The eldest is 21years old.
6. He was employed by the Nauru Phosphate Corp and his wife works for the Nauru Land Survey Department.
7. He has no previous convictions.

PRE-SENTENCE REPORT

8. The defendant is remorseful. He has quit drinking alcohol. He states that this will be the last time he will commit such an offence.
9. He is attending church services and Bible studies at the Correctional facility.
10. His family depends on him financially. His children, who are close to him will be devastated if a custodial sentence is imposed on the defendant. His handicapped son who relies on him will be affected the most.
11. The Chief Probation Officer recommends a non- custodial sentence.
12. The defendant's wife relies on him to help in the housework as she is diabetic. He likes betting on horses.
13. His older sister, Meriya Deireragea states that the defendant is the main breadwinner for his family. He rears animals with four pet dogs and thirty chickens.
14. She further states that the defendant's wife will struggle to look after their children and the pets as she's diabetic.
15. The Orthopaedic Surgeon at RON Hospital, Dr Vasyl SHLEMKO, submitted as follows:
 - i. The defendant has "degenerative spine disease'. He had undergone surgical intervention in 2021 – T9 to L3 pedicle screw and rod fixation- on 13 May 2021.
 - ii. He recommended-
 - a) 'Daily physiotherapy for lower limbs;'
 - b) 'Massage baby oil of the skin of the lower extremities to prevent dryness and peeling; and
 - c) Weekly replacement of the urinary catheter, take care of personal hygiene.'

PROSECUTIONS SUBMISSIONS

Aggravating Features

COUNT 1: 'Drinking'

16. The offence took place in a moving vehicle at a time when there were other road users.
17. The offending attempted to avoid Traffic Police.
18. The defendant was intoxicated and "exhibited behaviour of extreme aggression.'

COUNT 2: 'Causing Harm to Police Officer'

19. The victim, police Officer, Anthony Dabwadauw was carrying out his duties.
20. The assault 'on Anthony Dabwadauw was unprovoked and unexpected.

21. The defendant exhibited unruly and aggressive behaviour.

General Deterrence

22. These types of offending are prevalent in Nauru. ‘The law protects our roads and those in authority to conduct their work without fear of being mistreated and injured in the process.’

23. ‘The sentence should deliver a message to offenders in this country that our criminal laws frown upon the levity with which persons who offend such laws that protect the community and to those that administer law and order.’

Sentencing Tariff

COUNT 1: ‘Drinking’

24. The defendant **“is liable to a fine not exceeding \$5,000 or to a term of imprisonment not exceeding 12 months or to both.”**

25. The court is to consider the totality of the offending, mitigating and aggravating factors in coming to an appropriate sentence as there are no case authorities here.

COUNT 2: ‘Causing Harm to Police Officer’

26. The October 2020 amendment of this offence under the Crimes Act 2016 increased the penalty from 8 years to 20 years imprisonment. The court is referred to the second reading of the Amendment Bill where the then Honorable Minister for Justice, Maverick Eoe said:

“Sir, whilst on the subject of the protection of the society. I may add further that the Nauru Police Force is at the forefront of community protection and enforcement of the laws. However, there have been many instances which they have not been spared. They have been threatened or actually assaulted. Such irresponsible behaviour from the offenders does not assist the police in collating all the evidence to ensure that crimes committed under our laws are actually prosecuted.”

27. Madam DPP then refers to *R v Foreman Roland* Criminal Case N0. 04 of 2022 where I sentenced the defendant to 09 nine years imprisonment. 24 months were suspended for 03 years. With the deduction of the period in remand, the defendant had to serve 75 months in prison.

28. After referring to the issue of maximum and minimum sentences, the sentencing general considerations under Section 279 and imprisonment sentencing considerations under Section 280 of the Crimes Act 2016, **Counsel recommends that a minimum imprisonment term of 06 years 07 months is inevitable here.**

COUNSEL FOR THE DEFENDANT

29. Mr Clodumar refers to the ‘Pre- Sentence Report of the Chief Probation Officer, the mitigation of Pastor Jessa Agadio and the defendant’s wife, Grattia Detabene.

30. The defendant is remorseful. He regrets causing harm to a police officer. He reminds the court that the police officer had said in his examination in chief that he had forgiven defendant.
31. The defendant had tried to persuade his friends not to leave his house. He suggested that they try and avoid the traffic police.
32. Counsel distinguishes *R v Foreman Roland* Criminal Case No. 04 of 2022 in that the present case occurred in a police cell whereas Foreman's case occurred in a home. The police officer has forgiven the defendant.
33. The court still has the Section 282 of the *Crimes Act 2016* powers to reduce penalties and may suspend part or the whole of the sentence.

SENTENCING CONSIDERATIONS

Kinds of Sentences under the Crimes Act 2016

34. 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

35. 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.

36. The above provisions codify the common law sentencing principles of deterrence, totality and parity.

37. The general sentencing considerations are set out in section 279. These are:

- (1) 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 a Nauru, a court shall impose a sentence or make an order that is of a severity appropriate in all the circumstances of the offence.
- (2) In addition to any other matters, the court shall take into account whichever of the following matters are relevant and known to the court:
 - a) The nature and circumstances of the offence;
 - b) Any other offences or required or permitted to be taken into account;
 - c) If the offence forms part of a course of conduct consisting of a series of criminal acts of the same or a similar character, the course of conduct;
 - d) Any injury, loss or damage resulting from the offence;
 - e) The personal circumstances of any victim of the offence;
 - f) The effect of the offence on any victim of the offence;
 - g) Any victim impact statement available to the court;
 - h) The degree of which the person has shown contrition for the offence by taking action to make reparation for any injury, loss or damage resulting from the offence or in any other way;
 - i) If the person pleaded guilty to the charge for the offence, that fact;
 - j) The degree to which the person cooperated in the investigation of the offence;
 - k) The deterrent effect that any sentence or order may have on the person or on anyone else;
 - l) The need to ensure that the person is adequately punished for the offence;
 - m) The character, antecedents, age, means and physical or mental condition of the person;
 - n) The prospects of rehabilitation of the person;
 - o) The probable effect that that any sentence or other order under consideration would have on any of the person's family or dependants;
 - p) If the offence was committed by an adult in circumstances where the offending conduct was seen or heard by a child, other than another offender or a victim of the offence, those circumstances;
- (3) For the purposes of subsection (1), the appropriate severity of a sentence not only include mitigating factors but other aggravating considerations such as:
 - (a) Deterrence of prevailing nature of common crimes;
 - (b) The impact on the victim and the community; or
 - (c) Matters that in the opinion of the court are appropriate for the prevention of prevailing or certain nature of offences or protection of the vulnerable members of the community.

38. On the Sentencing Considerations – Imprisonment., Section 280 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 circumstances of the offence; or
 - v. the protection of the community requires it; or
 - vi. a sentence of imprisonment is necessary to give proper effect to Sections 278 and 279.

39. My powers to reduce penalties are covered under Section 282. It provides:

‘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.
- (3) Where under this Act, an offender is liable to a fine of a stated amount, a court may nevertheless impose a fine of lesser amount.
- (4) The power conferred on a court by this Section is not limited by any other provision of this Division.
- (5) This Section does not limit any discretion the court has, apart from this Section, in relation to the imposition of penalties.

DISCUSSION

COUNT 1: ‘Drinking’

40. I enter a conviction against you on this Count.

41. Considering the safety of other road users, the mitigating and aggravating factors, the aggressive attitude displayed by you against the police officers whilst being arrested – you are sentenced to 06 months imprisonment.

COUNT 2: Causing Harm to Police Officer’

42. The nature of the offending on this Count is summarized in my judgment as:

‘75. In his evidence, the defendant, Craven said that he was angry with the police. He did not want to be removed from the cell where his friends were. He kept swearing at his friends. In his words- ‘ the police disrupted their conversation.’ He was asked:

Q- ‘in the new cell, very angry?’

Ans- Yes, because he broke up our company- not right to take me away from my friends

76. When further questioned, the defendant said:

Q- ‘Anthony never expected the blow?’

Ans- Punching him was not my intention to hurt him-but for him to release me

Q- Vey upset with police that's why you punched Anthony?

Ans- My intention- not to punch to hurt him but for him to let go of me

Q- You knew Anthony was a police officer?

Ans- Yes

Q- He had his uniform on that day?

Ans- Yes with vest also- same as in the photos.

77. *PW-6 police officer Anthony suffered harm as evidenced by his own testimony and that of PW-4 Dr Yee Yee Wynn. There is also sufficient evidence that PW-6 police officer Anthony did not consent to being assaulted. The defendant intended to cause him harm. The defendant, in his own evidence knew that PW-6 was a police officer.*

78. *Having considered all the evidence, it is clear that the defendant was very angry for being arrested. He was cursing his friends. In his words, he was cursing them from the point of their arrest and whilst they were in the cell.*

79. *The defendant did not like being removed to another cell. He was angry still. He did not want the police to 'break up their conversation.' He knew that PW6 Anthony was a police officer.*

80. *The defendant admitted punching police officer Anthony. In his words, he did not want to hurt Anthony. He wanted Anthony to release him. Police officer Anthony stated clearly that the defendant turned and punched him. PW-3 police officer Nordoff confirms this. In his words, 'Craven punched Anthony. The punches landed on Anthony's head. It happened right in front of me.'*

43. Considering the clear evidence above, the sentencing provisions of the Crimes Act 2016, and the submissions from Counsels, **I convict you accordingly on Count 2.**

44. In considering the appropriate sentence in *R v Foreman*, Criminal case No. 06 of 2023, I said this-

'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.'

45. I have also considered Section 280 of the Crimes Act 2016 on the considerations for a sentence of imprisonment.

46. In *Baumer v The Queen* 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.**"

47. In your own evidence, you were angry. It began when you were stopped on the road by the police. You started swearing at your own friends from the roadside where you were arrested. This continued when you were placed in a police cell. When you were taken to another police cell, you got angry again. In your own words:

‘ Q- ‘in the new cell, very angry?’

Ans- Yes, because he broke up our company- not right to take me away from my friends.’

Q- ‘Anthony never expected the blow?’

Ans- Punching him was not my intention to hurt him-but for him to release me

Q- Vey upset with police that’s why you punched Anthony?’

Ans- My intention- not to punch to hurt him but for him to let go of me

Q- You knew Anthony was a police officer?’

Ans- Yes

Q- He had his uniform on that day?’

Ans- Yes with vest also- same as in the photos.’

48. Considering all the above, your aggressive nature, your total disregard for police authority, **I am satisfied that a sentence of imprisonment is appropriate here.**

How long should you be imprisoned for?

49. Your Counsel has submitted that part or the whole of the custodial sentence be suspended.

50. The Chief Probation Officer has recommended that for the sake of your family, a non-custodial sentence is appropriate.

51. Pastor Jezza Valentino Agadio submits that you deserve a second chance to improve your life and your family. He is willing to provide pastoral guidance to you.

52. I have also considered the pleas from your wife and older sister.

53. I refer to the following paragraphs in *R v Foreman*:

‘21. In *Burgoyne v Dixon* 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.”

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

Demunciation

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* :

“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)

54. I remind myself also of the following from *R v Foreman*:

‘27. I am also mindful of *Hoare v The Queen* , 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)* 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.”

55. I also remind myself of the then Minister for Justice, the Honorable Maverick Eoe said:

“Sir, whilst on the subject of the protection of the society. I may add further that the Nauru Police Force is at the forefront of community protection and enforcement of the laws. **However, there have been many instances which they have not been spared. They have been threatened or actually assaulted.**’

56. The many instances of assaults on police officers led to the increase in the penalty for this offence. It is a growing concern. There seems to be an underlying and fundamental lack of respect for the police in Nauru. The number of cases where police officers are assaulted that come before the courts is a testament to this. **Let it be known, the court will apply the clear intent of Parliament in awarding harsh sentences in such cases.**

57. The present case is more serious than the *R v Foreman* case. The assault on the police officer here occurred in a police cell. It clearly illustrates that within the police precinct, the main Police Station on Nauru, there is still blatant disregard for police authority. It also shows that even at a police station, a police officer, carrying out his lawful duties, **was not spared.**

58. As I said in *R v Foreman*- [33] - 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.

59. Taking all the above into account, you are sentenced to **10 years (120 months) imprisonment.**

60. 24 months are suspended for 3 years. This brings your sentence to 8 years (96 months). You were in remand for 18 days-(27th March 23- 20th April 23). I deduct one month from the 96 months.

61. ORDERS:

- COUNT 1- 6 months imprisonment; concurrent to
- COUNT 2- 95 months imprisonment.

62. You will serve a total of 95 months; **(7 years- 11 months) in prison.**

DATED this 03rd day of July 2024.


Kiniviliame T. Keteca

Judge

