



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

Criminal Case No. 13 of 2024

BETWEEN: THE REPUBLIC

PROSECUTION

AND: AYKERS DANIEL

ACCUSED

BEFORE: Keteca J

Date of Hearing: 17th February 2025

Date of Sentence: 18th March 2025

Case may be cited as: Republic v Aykers Daniel

Catchwords: Intentionally Causing Serious Harm: Contrary to Section 71(a)(b)(c) of the Crimes Act 2016.

Appearances:

Counsel for the Prosecution: **M. Suifa'asia**

Counsel for the Accused: **R. Tagivakatini**

SENTENCE

BACKGROUND

1. On 29th January 2025, the accused pleaded guilty to the charge of Intentionally Causing Serious Harm: Contrary to Section 71(a)(b)(c) (ii) of the Crimes Act 2016. He agreed with the Summary of Facts that were explained to him.

2. The maximum penalty for this offence, without aggravating circumstances, is 15 years imprisonment.
3. The accused is 35 years old, lives with his father, is unemployed and he has no previous conviction.

SUBMISSION BY THE PROSECUTION

4. The aggravating factors are:
 - i. The assault was unprovoked;
 - ii. The accused used a kitchen knife that wounded the neck of the victim; and
 - iii. The wounding was done with the intent to steal from the victim's shop at Bridge Road Trader Shop, Aiwo District.
5. Ms Suifa'asia referred to the following sentencing principles:
 - i. Section 277- kinds of sentences;
 - ii. Section 278- purposes of sentencing;
 - iii. Section 279- general sentencing considerations;
 - iv. Section 280- sentencing consideration on 'imprisonment.'
6. Counsel refers to the following cases:
 - i. **R v Atsime [2023] NRSC 27**- I recorded the facts as- You and the victim are related. Your parents are first cousins. You are 44 years old. At the time of the offence, the victim was 13 years old. You sought the victim's assistance to download videos on your phone. She assisted you. As she was about to leave, you stopped her. You held her hands and pulled her close to you. She was scared. You then released her. You followed her to her home, asking her not to tell anyone of what you did. You offered her money. You kept asking her not to tell anyone. You then went to your home. You brought a knife. You again begged her not to tell anyone. You then punched her on the jaw with the knife in your fist.
 - ii. The medical report shows the following:
 - a. D (12)- Specific medical findings- Abrasion at left lower jaw;
 - b. Swelling around abrasion- soft tissue injury;
 - c. D (14)- the injury was caused by a punch to her left lower jaw.
 - d. The photographs of the injury clearly show a cut on her left lower jaw. Fresh bloodstains can also be seen on the photographs

I sentenced the accused there to 60 months imprisonment. Out of this, 50% of the sentence was suspended for 3 years. Six months was deducted for time spent in custody. The accused was to serve 24 months in prison.

- iii. **R v Kepae [2022] NRSC 4**. The accused and the victim were involved in a fight. They were 22 years old. The victim suffered a broken jaw and lost a wisdom tooth. The accused was charged with one count of attempted murder and one count of intentionally causing serious harm contrary to ss. 55A and 71 of the Crimes Act 2016. The accused was acquitted on Count 1 and

convicted on Count 2- Intentionally causing harm. The accused was sentenced to 30 months imprisonment.

Of the 30 months, 50% of the sentence was suspended for 3 years.

Of the remaining 15 months, 7 months were deducted for time spent in custody and the accused was to serve a term of 8 months.

- iv. **Mental Health of the Accused-** Counsel submits the following:
- a. Dr Victor Harold Wasson prepared a Forensic Mental Health Assessment Report of the accused on 02nd October 24. It confirmed that the accused is a known patient at RON Hospital Mental Health Unit for Schizophrenia and epilepsy.
 - b. On the day of the assault, the accused was detained at the Nauru Correctional Facility on 26th January 24.
 - c. Dr Wasson concluded that at the time of the incident:
 - The accused ‘did know the nature and quality of the conduct;’
 - He knew that the conduct was wrong- ‘he could reason with a moderate degree of sense and composure, as perceived by reasonable people, was wrong;’
 - He was able to control his conduct;
 - He was not under the influence of his mental illness namely Schizophrenia/ Epilepsy;
 - The accused was fit to plead in court and participate in any legal proceedings;
 - He was being monitored on his regular medication- **long acting anti- psychotic injection and oral anti- epileptic meds.’**
- v. On sentencing of accused persons that suffer from a form of mental impairment or disorder, Counsel refers to **R v Adam [2022] QCA 41**. The Queensland Court of Appeal at [41] said- ‘Whenever an offender suffers from a mental impairment or disorder, there are settled principles to be applied in the consideration of a just sentence. In [R v Tsiaras](#),^[20] the Victorian Court of Appeal stated:^[21]
- “Serious psychiatric illness *not amounting* to insanity is relevant to sentencing in at least five ways. **First**, it may reduce the moral culpability of the offence, as distinct from the prisoner’s legal responsibility. Where that is so, it affects the punishment that is just in all the circumstances *and denunciation of the type of conduct in which the offender engaged is less likely to be a relevant sentencing objective*. **Second**, the prisoner’s illness may have a bearing on the kind of sentence that is imposed and the conditions in which it should be served. **Third**, a prisoner suffering from serious psychiatric illness *is not an appropriate vehicle for general deterrence*, whether or not the illness played a part in the commission of the offence. The illness may have supervened since that time. **Fourth**, specific deterrence may be more difficult to achieve *and is often not worth pursuing as such*. **Finally**, psychiatric illness may mean that a given sentence will

weigh more heavily on the prisoner than it would on a person in normal health”.

Later in **R v Verdins**,^[22] the Victorian Court of Appeal observed that the sentencing considerations identified in Tsiaras were not applicable only to cases of “serious psychiatric illness”. The Court observed:^[23]

“One or more of those considerations may be applicable in any case where the offender is shown to have been suffering at the time of the offence (and/or to be suffering at the time of sentencing) **from a mental disorder or abnormality or an impairment of mental function, whether or not the condition in question would properly be described as a (serious) mental illness.**”

At [43] The Court went on to reformulate the principles identified in Tsiaras as follows: [24]

“**Impaired mental functioning**, whether temporary or permanent (‘the condition’), is relevant to sentencing in at least the following six ways:

1. The condition may reduce the moral culpability of the offending conduct, as distinct from the offender’s legal responsibility. Where that is so, the condition affects the punishment that is just in all the circumstances; and **denunciation is less likely to be a relevant sentencing objective.**
2. The condition may have a bearing on the kind of sentence that is imposed and the conditions in which it should be served.
3. Whether general deterrence should be moderated or eliminated as a sentencing consideration **depends upon the nature and severity of the symptoms exhibited by the offender, and the effect of the condition on the mental capacity of the offender**, whether at the time of the offending or at the date of sentence or both.
4. Whether *specific deterrence should be moderated or eliminated as a sentencing consideration* likewise depends upon the nature and severity of the symptoms of the condition as exhibited by the offender, *and the effect of the condition on the mental capacity of the offender*, whether at the time of the offending or at the date of the sentence or both.
5. The existence of the condition at the date of sentencing (or its foreseeable recurrence) may mean that a given sentence will weigh more heavily on the offender than it would on a person in normal health.
6. Where there is a serious risk of imprisonment **having a significant adverse effect on the offender’s mental health**, this will be a factor *tending to mitigate punishment*”.

At [44] - In terms of the extent to which impaired mental functioning may reduce moral culpability, the Court relevantly observed:

“It is of the nature of the sentencing discretion that views will differ as to how, and to what extent, **impaired mental functioning may reduce the blameworthiness of the offender’s conduct. The effect on the court’s assessment of culpability will, of course, vary with the nature and severity of the condition, and with the nature and seriousness of the offence.** It is not appropriate for an appellate court to be prescriptive in this regard, *nor is it possible to be exhaustive.* It may assist sentencing judges, nevertheless, if we list the various ways in which **impaired mental functioning** has been held – correctly, in our view – to be capable of reducing moral culpability.’

Impaired mental functioning at the time of the offending may reduce the offender’s moral culpability if it had the effect of:

- (a) impairing the offender’s ability to exercise appropriate judgment;
- (b) impairing the offender’s ability to make calm and rational choices, or to think clearly;
- (c) making the offender disinhibited;
- (d) impairing the offender’s ability to appreciate the wrongfulness of the conduct;
- (e) obscuring the intent to commit the offence; or
- (f) contributing (causally) to the commission of the offence.”

At [45]- ‘In **R v Goodger**,[26] Keane JA (with whom Fraser JA and Atkinson J agreed) referred to Verdins with apparent approval and also observed:

“This Court has accepted the proposition that, generally speaking, a mental disorder short of insanity *may lessen the moral culpability of an offender and so reduce the claims of general or personal deterrence upon the sentencing discretion.*”

Ms Suifa’asia adds that based on Dr Wasson’s assessment, *the accused was not under the influence of his mental illness at the time of the offending.* His moral culpability is not lessened. The sentence here should also reflect deterrence.

vi. Counsel concludes with reference to **R v Taukai [2024] SBHC 153**, a decision of the High Court of Solomon Islands. The accused pleaded guilty to a charge of attempted murder. The sentencing remarks summarise the

offending as- 'You followed your mother around asking her for betel nut. She did not give you any. She went to her market stall. While there she found a betel nut fruit in her pocket. She took it out and bit the outer husk. You took a bush knife and swung it at her neck. You swung it again and struck her on the arm she used to block your blow. She fell to the ground and tried to escape. You cut her again on her leg. Fortunately, your brother and another person heard the noise and came and chased you away. They removed the bush knife from you.

Your mother was transported to the local clinic then to the hospital at Gizo. She was in a critical condition because of the loss of blood and the injuries you had inflicted on her. Her right forearm had a deep laceration and the ulna bone in her left forearm was fractured. Her right leg had two open lacerations and the tibia was fractured. You had cut her left leg amputating both her big toe and the toe next to it. She required surgery and was transfused with four units of blood. Once she returned to Wagina she could not walk. She was in hospital from the end of May 2023 until mid-September 2023.

The accused had a history of psychosis. He had an admission history with the National Psychiatric Unit. He suffered from insomnia, blocking thoughts, being restless and suffering from chest pain and shortness of breath. **He had psychotic relapses and needed anti-psychotic drugs.**

The accused was sentenced to 4 years and 6 months imprisonment with a direction that he receives his medication.

- vii. Ms Suifa'asia submits that a custodial sentence with 'continuous treatment and monitoring' of his condition are warranted here.

SUBMISSION FOR THE ACCUSED

7. Mr Tagivakatini submits as follows:
- i. The attack was unprovoked;
 - ii. The accused pleaded guilty and did not want the victim to relive her trauma.
 - iii. He acknowledges that what he did was wrong.
 - iv. He is remorseful.
 - v. He has been in custody due to this charge and for medical purposes for about 9 months.
8. Counsel also referred to **R v Atsime [2023] NRASC 27** and the similarities therein with this case. These are:
- i. Offensive weapon- both used a knife to strike the victim;
 - ii. Provocation- the attacks were unprovoked;
 - iii. Post- Incident- voluntary surrender to the police; and
 - iv. Early guilty pleas.

9. This offence warrants the recording of a conviction and a sentence of 24 months, as in **R v Atsime** will be appropriate here.

VICTIM IMPACT STATEMENT

10. The victim suffered a 1cm 'punctured wound' on the right side of her neck and a superficial knife wound/laceration to her right wrist. The medical report states – *'Superficial wound only.'*
11. The victim is 45 years old. She has children in China. She is single and in a relationship in Nauru. She was afraid. She thought she would die. She has nightmares and is afraid to go out. She keeps herself busy to forget the incident. She wants the accused to go to jail.

PRE- SENTENCE REPORT

12. Chief Probation Officer Raelytta Daoe submitted the following:
- i. She interviewed the accused and his brother Dabuge Daniel;
 - ii. The accused lives with his elderly father in their family home at Aiwo;
 - iii. Since he was young, the accused suffered from epilepsy. He has to take medication for this condition;
 - iv. Recently, the medications did not work well 'and he suffered regular relapses exhibiting reclusive, anti-social behaviour which escalated into violence at times;
 - v. A different doctor prescribed different medication. This helped the accused and there were no relapses of anti-social behaviour;
 - vi. The accused had been incarcerated previously because of his health condition;
 - vii. He is unemployed and receives a fortnightly disability allowance from the government. Coupled with his father's elderly allowance, the monies are sufficient for their livelihood; and
 - viii. Since the change in medication, the accused's health has improved. His siblings have now entrusted him with the responsibility of looking after their elderly father.

The report adds:

- a. The accused 'expressed deep regret for his actions which he committed whilst he was not in the right state of mind;
- b. He is a first offender. He needs 'proper and consistent administration of his medication and help from his Doctor and family members;
- c. He is the only one looking after his father; and
- d. The accused is a suitable candidate for probation or community service.

DISCUSSION

13. I have considered the following provisions of the Crimes Act 2016:
 - i. Section 277- Kinds of sentences;
 - ii. Section 278- Purposes of sentencing;
 - iii. Section 279- Sentencing considerations;
 - iv. Section 280- Sentencing considerations- imprisonment;
 - v. Section 282- Power to reduce penalties
 - vi. Section 282A- Pre-trial detention not to be considered for offences under Part 7

14. Considering the above provisions and case law, **I enter a conviction against the accused.**

15. What would be the appropriate sentence here? Based on the case authorities referred to by Counsels and discussed above, it is clear that the offence of ‘Intentionally causing harm serious harm under Section 71 of the Crimes Act 2016 *warrants a custodial sentence.*

16. Having reached that conclusion, I remind myself of my observations of the accused in court. He appeared disoriented. He had difficulty in comprehending the facts of the case when translated in the Nauruan language. He was struggling to concentrate. I remind myself that Dr Wasson concluded that the accused knew what he was doing at the material time. In the same report Dr Wasson concludes- **‘he is currently being followed regularly by our mental health Unit Outreach team and on regular medications (long acting anti – psychotic injection and oral anti – epileptic meds).** I also refer to the principles in *R v Verdins*, discussed above, where the Victorian Court of appeal looked at the 6 principles to be considered in cases of **‘impaired mental functioning.** ‘I find that this reduces the moral culpability of the accused. I further find that an immediate custodial sentence will fall foul of principle 6 in that- ‘Where there is a serious risk of imprisonment **having a significant adverse effect on the offender’s mental health,** this will be a factor tending to mitigate punishment”.

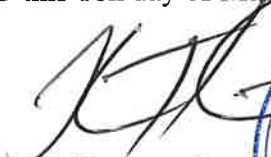
17. Considering all the above and noting my decision in *R v Atisme [2023] NRASC 27* I sentence the accused to 12 months imprisonment.

18. Should any portion of this sentence be suspended? *In Jeremiah v Republic [2017] NRSC 25*; Criminal Appeal 101 of 2016 (25 April 2017) and *R v Kepae [2022] NRSC 4*, these are authorities that I have the power to suspend a sentence.

CONCLUSION

19. The accused is sentenced to 12 months imprisonment. This is suspended for 2 years.
20. I direct RON Hospital Mental Health Unit to take such steps that are necessary to best ensure that Aykers Daniel receives his medication and the supervision he requires.
21. I further direct Dabuge Daniel to closely monitor his brother Aykers Daniel's health condition and to see that he receives family visits and the necessary support.

DATED this 18h day of March 2025


Kiniviliame T. Keteca

Judge

