



REGINA
V
LARREX LULUA

Before: Principal Magistrate Ms. Fatimah Taeburi
Mr. Vernon E. Taupongi (DPP) for the Crown
Mr. Bobby Harunari (PSO) for the defendant

Date of Sentence: 20th November 2019

SENTENCE

Introduction

1. The accused pleaded guilty to one count of grievous harm contrary to section 226 of the Penal Code.
2. The agreed facts filed on 14th November 2019 shows that the accused kicked the victim's left hand once. The kick caused a serious injury to the victim's left hand.
3. On first examination, the doctor described the injury as, "close fracture (midshaft) - ulna and radius". On a subsequent examination, the doctor described the injury as "swollen and deformed LT forearm". The victim was treated with "ORIF-PLATE/SCREWS - OPEN REDUCTION INTERAL FIXATION". (I refer to the medical report dated 7th September 2017.
4. I convict the defendant based on the agreed facts.
5. To determine the appropriate punishment, I consider the following aggravating factors;

6. Firstly, it cannot be ignored that the injury sustained by the victim is very serious. I consider the pain and suffering that the victim experienced. I also consider the effects of the injury on his daily life. I accept that for a period of time, the victim would have been unable to use his left hand.
7. Secondly, I consider the fact that the victim was not the aggressor or the instigator of the fight. The victim's friend by the name of Derol was cause of the violence. The victim was innocent and was actually trying to mitigate the situation. I agree with the prosecutor that the accused's acts towards the victim were unprovoked. Derol was in fact the one who provoked the breach of peace.
8. I also consider the following mitigating factors;
9. The accused pleaded guilty to the charge. It shows that he accepts responsibility for the wrongs committed to the victim. His plea of guilty also saved time and resources.
10. He has no previous conviction.
11. He is a young man. I accept that there is higher possibility of rehabilitation with young offenders compared to others.
12. I take into account that the defendant acted in the spur of a moment. Clearly from the agreed facts, he was sleeping when a fight occurred outside his house. Derol, the victim's friend, used abusive words towards the accused's father which was the cause of the fight. The defendant woke up, came outside and probably learnt of what had happened. He then acted. I therefore find that he did not plan to assault the victim.
13. I consider the reconciliation in custom. I accept the letter from Chief Jerry Sabino dated 6 October 2017 as proof of the reconciliation. I must however state that customary reconciliation does not erase the wrong committed by the accused. It settles the dispute, it prevents any further violence and it is a

demonstration of remorse on the part of the offender. That is the extent to which I consider the customary reconciliation in this case.

14. I take the personal circumstances of the defendant into consideration.
15. The maximum penalty for grievous harm is 14 years imprisonment.
16. In the circumstances of this case, I am satisfied that the appropriate sentence is 1 year and 2 months imprisonment.
17. The time spent in custody is to be taken into account.
18. Right to appeal within 14 days.

Fatimah Taeburi

Ms. Fatimah Taeburi
Principal Magistrate

