



IN THE DISTRICT COURT OF NAURU

Criminal Jurisdiction

Criminal Cases No. 6,7,9,10,13,14 & 34 of 2017

THE REPUBLIC OF NAURU

Complainant

-v-

JA, JK, PK, RS, KT, DJ & BH

Defendants

Mr. Filimoni Lacanivalu & Laisani Tabuakuro for the Republic

Mr. Ravunimasei Tagivakatini for Defendants

Date of Hearing: 2nd June 2017

Date of Submissions: Friday 9th June 17

Date of Sentence: 14th June 2017

SENTENCE

1. All the defendants were under 18 on the date of the offence and are a child under section 3 of the *Child Protection and Welfare Act (CPWA) 2016*. Pursuant to Section 55 (b) of the said Act, I prohibit anyone from publishing the defendant's identity or any information leading to their identification. They shall for this sentence, be referred to by their initials.
2. On 2nd June, each of you pleaded guilty to one count of Theft contrary to Section 154(1)(a) and (i) of the Crimes Act 2016. The value of the vehicle stolen was over \$1,000.00 and the maximum sentence for the offence therefore is 7 years imprisonment.

3. The summary of facts which you admitted states that on 28th November 2016 Mr. Adin Seath, an Australian national employed with the Australian Border Force returned to his room in the Meneng Hotel and left his vehicle keys there. He went to bed at about 10:30 p.m. and his keys were still there. Sometime that night, DJ & JK entered Mr. Seath's room and stole the keys of the vehicle. The others were waiting nearby. Once the keys had been obtained, DJ & JK stole the white dual cab Holden Colorado belonging to Mr. Seath and the rest of you got in and drove around for a joyride around the island. The theft was discovered on 29th November and reported to Police. You were spotted near the Bondi Beach Restaurant, the vehicle was stopped and you all ran away except DJ who was caught by Police. The rest of you were arrested after that.

Seriousness and starting point

4. Section 280(a)(4) of the Crimes Act requires the Court to impose a sentence of imprisonment "*only if in the opinion of the Court... any other sentence would be inappropriate having regard to the gravity or circumstances of the offence.*" (emphasis mine). This requires that the Court look at the gravity of the offending. Another word for gravity is seriousness.
5. Section 279 (2) of the Crimes Act 2016 requires the Court to take account of:-
 - (d) *any loss or damage resulting from the offending;*
 - (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;*
6. These two subsections should therefore be assessed first to determine whether a custodial sentence is appropriate. The type and severity of the sentence depends on the seriousness of the offending which I determine by looking at two factors, namely your culpability (blameworthiness) and the harm caused, intended or might foreseeably have been caused by your actions
7. Culpability starts with negligence at the lowest level, followed by recklessness, then knowledge, with intentional at the highest level. Your actions were intentional and the harm caused is the loss to the owner of the vehicle. Fortunately for you, the vehicle was recovered without any damage to it.

Aggravating factors

8. The aggravating factor of this offending is that the two of you committed this offence in the company of others and it was done at night; and that an offence was committed (though not charged) to obtain the keys to the vehicle; and that there was evidence of planning.

9. The *Child Protection and Welfare Act 2016* states at section 48(b) that a sentence of imprisonment shall be a sentence of last resort for children.

PERSONAL CIRCUMSTANCES

10. **JA.** Your counsel said that you are 16 years old and unemployed. You are single and reside with your parents at Meneng District.
11. **JK:** You are 16 and live with your parents at Meneng District. You are unemployed.
12. **PK.** You are 16 years old, unemployed and live with your parents at Meneng District.
13. **RS:** You are 16 years old, unemployed and live with your parents at Meneng District.
14. **KT:** You were 17 at the time of the offending and you live with your guardian at Meneng District. You are unemployed.
15. **DJ:** You are 16 years old, unemployed and live with your parents at Meneng District.
16. **BH:** You are 16 years old, unemployed and live with your parents at Meneng District.

MITIGATION

17. In mitigation, your counsel said that you are all first offenders, you are remorseful and you seek the court's forgiveness; you pleaded guilty and thus saved the time for a trial; you co-operated with the Police; you promised not to re-offend; and you seek leniency from the Court.
18. For each of you, your counsel said you got yourself into this offence through peer pressure. Your counsel submits that the Convention on the Rights of the Child (CRC) applies to you. Specifically he highlights Article 40(4) of the CRC which highlights re-integration into society can be achieved by care, probationary, counseling orders, training programs and other alternative methods that can best deal with juvenile offenders.
19. This is a serious offence with a maximum sentence of 7 years imprisonment.
20. In *Republic v Tyrone Deiye* (Cr. No. 154/14), the defendant stole \$1,920.00 and repaid the amount in full. He did not plead guilty but was found guilty after a trial. He was given a sentence of 9 months imprisonment suspended for 18 months because the amount of money stolen was relatively low and it had been repaid in full. The defendant

- was charged under section 398 of the Criminal Code 1899 where the maximum sentence was 3 years imprisonment.
21. The prosecution referred me to *Bruce Diema v The Republic* [[1976] NRSC 4 where the defendant was charged with two counts of stealing petrol contrary to section 398 of the Criminal Code 1899. His sentence of 3 months imprisonment was reduced to 1 month on appeal. I am not aware of the circumstances of the offending, the aggravating factors, the mitigating factors and the personal circumstances of the accused .
 22. This court is bound to follow the requirements of sections 277 -282 or Part 15.2 of the Crimes Act 2016 when considering your sentence and the actual sentence prescribed in the section creating the offence. There is a lot of discretion involved and the discretion must not be fettered by blindly following precedents which were arrived at by taking into account different considerations.
 23. The Child Protection and Welfare Act provides at Section 48(b) that a sentence of imprisonment shall be a sentence of last resort for children. Section 280 of the Crimes Act 2016 also provides that a sentence of imprisonment is to be given *only if in the opinion of the Court... any other sentence would be inappropriate having regard to the gravity or circumstances of the offence*
 24. This is a serious offence with aggravating circumstances. There must be some deterrent sentence for this offence to deter you personally and other young people from this kind of offending.
 25. I have taken account of the circumstances of the offending, and the gravity of offence and consider that a custodial sentence is not necessary only because you are children and first offenders.
 26. Without recording a conviction, I sentence each of you to 50 hours of community service pursuant to section 22(2) of the Criminal Justice Act 1999.
 27. You will report on Monday 19th June 2017 to the Acting Chief Probation Officer at the Registry of the District Court who will brief you on what will be required of you.
 28. You have 14 days to appeal.


PENIJAMINI R LOMALOMA
Resident Magistrate

