



IN THE DISTRICT COURT OF NAURU

CRIMINAL JURISDICTION

Criminal Case No. 14 of 2020

THE REPUBLIC OF NAURU

-v-

SPEEDY HUBERT

SENTENCE

Prosecution: DPP Ronald B Talasasa

Defence: Francilia Akubor

Hearing: 20th August 2020

Sentence: 21st August 2020

CATCHWORDS: Sentence – Burglary; Bedroom is sacrosanct; Burglary – aggravating factors.

Burglary – third property offence

Introduction

1. The accused was found guilty of one charge of one charge of Burglary contrary to section 160(1)(a)(b)(c)(i) of the Crimes Act 2016 and one count of damaging property contrary to section 201(a) and (b) of the same act.
2. The facts are set out fully in my judgment of 11th August, after which I ordered a presentence report to be made. I received submissions on sentence last evening and I thank both counsels for their submissions.

The Facts

3. On 27th March, the accused entered the house of Laurenata Harris in Aiwo District at about 3:30 a.m. Laurenata was asleep in the bedroom with her 10 year old son and Kiarake Katimero whom Laurenata calls a sister even though they are not related by blood. Laurenata woke up when a lamp which had belonged to her late husband fell to the floor and broke. She saw a young man in the room carrying two bags. He ran to the lounge and she followed him. He tried to open the door but could not as it was locked

with a safety lock. She grabbed his back and he turned and told her he had a friend outside. She said this was to threaten her with his friend's presence. She was scared but tried to hide her fear. The boy then gave Laurenata one of the bags which belonged to her son. They then went to the lounge where they sat about 2 meters apart and talked. The intruder smelled strongly of alcohol. They talked for about 20 minutes and she identified the accused as the person who entered her house without her permission that night. The photograph showed the lamp broken on the floor where it fell.

4. Kiarake Katimero corroborated the evidence of Laurenata and I found the accused guilty as charged.

Seriousness

5. A court is required to pass a sentence that is commensurate with the seriousness of the offence. The seriousness of an offence is determined by two main parameters; the culpability of the offender and the harm caused or risked being caused by the offence.

The seriousness of the offence will determine¹:

- a. which of the sentencing thresholds has been crossed;
- b. indicate whether a custodial, community² or other sentence is the most appropriate;
- c. be the key factor in deciding the length of a custodial sentence, the onerousness of requirements to be incorporated in a community sentence and the amount of any fine imposed.

Count 1: Burglary

6. This was an intentional act and therefore highest on the culpability scale. The harm caused is defined in section 8 of the Crimes Act 2016 to include both physical and mental harm. There appeared to be no physical harm caused in the burglary but this was an invasion of a person's bedroom where she was asleep with her 10 year old son and her friend. This is a violation of her sanctum sanctorum---her holy of holies and it is similar to a sexual violation of her person. Entering a person's bedroom at night when she is asleep causes serious mental harm to a person and I can infer that Laurenata, her son

¹ UK Sentencing Guidelines Council: Overarching Principles: Seriousness Overarching Principles: Seriousness, para 1.3

² Community sentence is used here to describe a sentence of probation or community service under the Criminal Justice Act 1999

and her friend would have been traumatised when they were woken up by the sound of the breaking lamp in their bedroom. The harm for this offence is the risk that it could have caused to the occupants and or the accused if the occupants had attacked the accused. There is also the risk of sexual offences considering that the occupants are women and a young boy and the fact that the accused was drunk. I would therefore rate this offending at past the midpoint on the seriousness scale.

Personal Circumstances

7. The accused was born on 31 March 2002 and the offence was committed on 28th March 2020 so the accused was 3 days short of his 18th birthday when he committed this offence. He is the third oldest with 8 siblings ranging in age from 5 years to 21 years of age. He was unemployed and used to rely on his parents for support before he was remanded in March for this offence. The accused completed Form 4 in high school when he was 16 and did not continue his education further.
8. The pre-sentence report shows that the accused was influenced by associating with older boys. He did not attend church until he was remanded for this offence. I take this as steps to rehabilitate himself.
9. The accused has a prior history:-
 - a. In CR 63/2018, he pleaded guilty to one count of receiving stolen property and was sentenced to 60 hours of community service as he was a 16-year old first offender;
 - b. In *R v AD, OD & SH [2019]*³, he was found guilty of one count of being found in certain place without lawful authority. He was sentenced to 4 months imprisonment. He is still serving that sentence.

Mitigation

10. I thank Defence Counsel for the amount of research and work that she has put in to these sentencing submissions, especially on seriousness, and the mitigating factors. She submitted these as mitigation on behalf of the accused:
 - a. He is a young offender who needs guidance in the right direction.
 - b. The accused has started attending church in prison, something he never did before he went in and this indicates that he is taking steps to rehabilitate himself;

³ NRDC 9 of 2019

- c. The accused is remorseful and seeks the court's forgiveness; and
- d. He promises not to re-offend.

Aggravating Factors

11. The aggravating factors for this offending are:-

- a. That it took place at night;
- b. That he entered an occupied bedroom;
- c. The presence of a child in the bedroom that he burgled;
- d. The accused was drunk when he committed the offence;
- e. That the accused said there was another person outside to add a further threat to the victims; and
- f. The accused was on bail in Supreme Court Criminal Case No. 19/19 on a charge of rape and public nuisance when he committed this offence;

12. The accused has failed to respond to the leniency of the court, not once but twice for similar offences in the past. This is the third property offence that the accused has been engaged in and the accused has shown in all his offending that he does not have respect for other people's property rights. He is a danger to society which must be protected from him and his likes by appropriately serious deterrent sentences.

The Tariff

13. Since the Crimes Act came into force in 2016, there have not been enough cases and certainly not enough appeal decisions from which this court can establish the upper and lower bounds of this offence for **adult** offenders. This is what is known as the tariff for this offence. Sentences for this offence before 2016 are not helpful as the maximum sentence was only 3 years imprisonment whereas now it is 10 years. Until sufficient cases are dealt with by the courts to establish the tariff, the court will have to rely on first principles to reach the sentence.

The Sentence

14. I have taken account of the seriousness of this offence and I consider a starting point of 3 years as appropriate. For the aggravating factors I would add 18 months to your sentence, taking the sentence to four and a half years. For the mitigating factors, I would reduce the sentence by 12 months, reducing the sentence to 3 years and 6 months.

Count 2: Damaging Property

15. This was a reckless act and therefore second from the bottom on the culpability scale.

There was no evidence as to the value of the property. It belonged to Laurenata Harris's late husband and so we can infer that it would have sentimental value. I would rate the seriousness of this offence as relatively low.

16. The aggravating circumstances are that it was done at night; in the bedroom of the complainant; that the accused was drunk; and that he committed this offence when he was on bail from another offence. The mitigating factors are the same as for the burglary.

17. I would sentence the accused to 6 months imprisonment for this offence. The DPP asked for a consecutive sentence for this offender and quoted authorities from the Solomon Islands and Fiji. However, the offence of Burglary when committed with another offence like theft or damaging property historically carried one sentence because they are so intimately linked. This resulted in the statutory offence of housebreaking, entering and larceny.

18. The damaging property took place during the burglary and I therefore order that the sentences run concurrent to each other.

Order

19. The accused is convicted of both charges and is sentenced to:

- a. Count 1: 3 years 6 months for the burglary; and
- b. Count 2: 6 months for the damaging property to be served concurrent to count 1 less the time spent in remand.

20. Fourteen days to appeal.


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Penijamini R Lomaloma
Resident Magistrate



The seal of the District Court of Nauru is circular with a blue border. Inside the border, the words "DISTRICT COURT OF NAURU" are written in a circle. In the center, there is a coat of arms featuring a shield with a triangle and a circle, flanked by two figures. Below the shield is a banner with the motto "OMNES VULT BENE".