



IN THE DISTRICT COURT OF NAURU

CRIMINAL JURISDICTION

Criminal Case No. 50/20

THE REPUBLIC OF NAURU

-v-

KAUWEN ALIKLIK

SENTENCE

Prosecution: Ms. Susan Serukai
Defence: Frankie Ribaw & Vinci Clodumar
Judgment: 3rd February 2021
Sentence: 24 February 2021

CATCHWORDS: *Causing Harm to a Police Officer-section 77(ii) of the Crimes Act 2016;*

Sentence – Causing Harm to a Police Officer

Introduction

1. The accused was found guilty of one charge of causing harm to a police officer contrary to section 77(a)(b)(c)(i) of the Crimes Act 2016.

The Facts

2. The facts are set out fully in my judgment and I will merely summarize it here.
3. On the 3rd of January 2020, police received a report of a fight near Meneng Hotel. Constable Nene Ika and Constable Kanibe were on duty and attended the report. They were in police uniform and drove to the scene in a police vehicle. When they arrived at the scene, they saw Kauwen Aliklik and Chris Dube fighting. Constable Nene approached Chris while Constable Kanibe approached the accused, Kauwen Aliklik to stop him. After Constable Nene had stopped Chris, he found Constable Kanibe challenging the accused to a fight. Constable Nene told off Constable Kanibe for challenging the accused and then as he turned away, he was punched from behind by the accused who was the closest person to him. Constable Nene tried to

arrest the accused but could not do so as he was resisting. The accused admitted trying to get away from Constable Nene and running away. Constable Nene then tackled him to the ground so he could handcuff him. Constable Nene was on top of the accused on the ground. Constable Nene was hit several times with punches and kicks from a group of men. Constable Quan Detenamo, an off duty police officer attending the party, saw the men “ganging up” on Constable Nene and went to assist him. He grabbed the accused and was taking him to the police vehicle when the accused bit him on the hand, got loose and escaped on a motor bike.

4. When the police backup arrived, Constable Nene was taken to RON Hospital where he was examined by the doctor. He was found to have a superficial abrasion wound of the frontal area and left temporal region of his head.

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.
6. The culpability of the offender starts with negligence at the lowest end, followed by recklessness, then knowledge and with intentional acts at the top of the scale. This was an intentional act. There is no evidence of any pre-planning. The harm caused included superficial abrasions to the frontal area and the left temporal region of the head. These are the visible injuries. The harm is defined in section 8 of the Crimes Act 2016 to include physical and mental harm. One can infer that he must have

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

feared for his safety when he was being attacked by a group of over 10 men with no help at hand.

7. The defence submits that the accused did not throw a punch at the victim³. This is incorrect. In his unsworn statement he said, "I don't recall if I punched Nene when he was trying to stop me and Chris."⁴ He did not deny it when he had the opportunity to do so in court. This does not take into account the findings of the court in the judgment that the accused's conduct is one of the elements of the offence charged and that such conduct led to the harm being caused to the officer.
8. I accept the submission by the accused that the accused must have acted almost instinctively and held the intention for only a very short period of time. Once he was on the ground with Constable Nene on top of him, he did not do anything else—this is from the testimony of Constable Nene himself.
9. From the physical harm and the inferred mental harm, I would rate the seriousness of the offending at beyond the midpoint.

Aggravating Factors

10. The aggravating factors are those factors that increase the culpability of the offender. The aggravating factors of this offending are as found in my judgment that the accused was in the company of 1 or more persons for this offence. This is a statutory aggravating factor that raises the maximum sentence from 8 years to 10 years imprisonment.
11. I find no non-statutory aggravating factors.

Personal Circumstances

12. The accused is 19 years old. He was born on 5th November 2001 and would have been 18 at the time of the offending. He is the oldest of 10 children ranging in age from 18 to 3 years old. Before he was incarcerated, he was working in the construction industry and his parents relied on his wages to supplement their income to support their large family.

³ Paragraph 1.4 of defence submissions on sentence.

⁴ R v Kauwen Aliklik (2020) NRDC 50/20, 2 Feb 2021, paragraph 20 of judgment

Mitigating Factors

13. The accused provided two character references from the President of the Meneng Community Council and Bishop Preston Thoma as part of his mitigation submissions.
14. The mitigating factors are:-
 - a. The accused is a young offender;
 - b. He is a first offender;
 - c. The offence was not premeditated;
 - d. The accused is remorseful and has realized the danger that alcohol poses in his life. This is the first step to reform; and
 - e. He has rehabilitated himself whilst in remand by changing and becoming a dedicated Christian. He has convinced his family to change also. He has discovered the error of his ways and has promised to change his life further when he is released.

The Custodial Threshold

15. I have taken account of the seriousness of the offending, the aggravating factors, the mitigating factors, the personal circumstances of the accused, in particular his youth, the matters set out in sections 277-282 of the Crimes Act 2016 on sentences and I consider that a custodial sentence is necessary to deter him and other members of the public from attacking police officers carrying out their duty. Such behaviour must be punished and a deterrence sentence must be given to deter the accused and others from this type of attack in the future.

Tariff

16. Defence counsel has referred me to the case of *R v Dabub Jeremiah*⁵ where the accused was sentenced to 3 months imprisonment for this offence. There the court found the accused was struggling with the police officers in the dark who grabbed him without identifying themselves as police officers. Here, it is completely different. It was daylight and there can be no doubt that the victim was a police officer in uniform who had come in with another officer in a police vehicle that was stopped meters from the site to try to stop an argument and then had been assaulted. Constable Nene was brutally attacked as he was carrying out his duty, not by the

⁵ [2018] NRDC 2 Crim Case 32 of 2018.

accused only but by a group of men, some of whom were clearly identified but not charged.

17. In *R v Charo Garoa (2020) NRDC 1/20*, the accused was involved in the same fight as this accused. Charo Garoa was amongst those who came and kicked/punched Constable Nene while he was on the ground. Charo Garoa was convicted by this court and sentenced to 2 years imprisonment but he was charged with the lesser offence, without any of the statutory aggravating factors. His maximum sentence was 8 years imprisonment as opposed to 10 years for Kauwen Aliklik.
18. In *Republic v Namaduk*⁶, the accused assaulted police officers carrying out their duty. He was charged with Risking Harm Contrary to Section 81 (a)(b) &(c) of the Crimes Act 2016 and one count of Threatening to cause serious harm to a public official contrary to section 93(a)(b)(c)(d)(ii) and (e) of the Crimes Act. They are different charges from the one the accused has been found guilty of.
19. The Crimes Act came into force in 2016 and there are not sufficient cases of this offence to establish an upper and lower limit of sentences for this offence. Sentences would therefore have to be worked out from first principles.
20. Assaults against police officers carrying out their duty must inevitably invite custodial sentences as they are putting their life and health on the line to protect members of the public. The courts have and will continue to treat such offences seriously to deter others from assaulting them in the performance of their duties. Attacks on people serving the public such as nurses, doctors, and Community Liaison Officers will invite stiff sentences also.

The Sentence

21. This offence carries a maximum sentence of 10 years imprisonment. I have taken account of the seriousness of the offending and consider a starting point of 3 years imprisonment is appropriate. For the mitigating factors, I would reduce the sentence by 9 months, leaving a sentence of 2 years 3 months less the time in remand.
22. The accused has spent 168 days in remand. That is 24 weeks which is 6 months. The accused is therefore to serve 21 months imprisonment.

⁶ [2018] NRDC 33 of 2018

Orders

23. The accused is convicted and sentenced to 2 years and 3 months in jail less 6 months spent in remand.

24. 14 days to appeal.



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Penijamini R Lomaloma
Resident Magistrate

