

IN THE SUPREME COURT OF NAURU

Criminal Jurisdiction

Criminal Appeal No. 21 of 1977

DIRECTOR OF PUBLIC PROSECUTIONS

Appellant

v.

BOB AGIGO

10th January, 1978 at 2.20 p.m.

In Court

Before Mr. Justice I.R. Thompson, Chief Justice

For the Appellant: Mr. D.G. Lang

For the Respondent: -

Respondent present.

Interpreter: Mr. Alec Harris, Clerk of Courts

Adjourned to 13/1/78 at 9.00 a.m.

I.R. THOMPSON  
Chief Justice

13th January, 1978 at 9.55 a.m.

For the Appellant: Mr. D. Lang

For the Respondent: Mr. P.H. MacSporran

Respondent present.

Appeal by D.P.P. against sentence\*

MR. LANG: Fine of \$10 imposed for offence of being in possession of firearm. Respondent alleged that he found the .22 air rifle

in the bush. On own admission kept it for 2 years. Eventually approached police to surrender firearm. Another person had been apprehended for a similar offence; not connected with respondent.

Maximum sentences - \$40 or imprisonment for 1 year. \$10 fine appropriate to technical offences, not where person had the firearm for two years.

Sad history in Nauru in respect of firearms. They are prohibited for good reason. Any possession of firearms ought to be treated as a serious offence.

Sentence wholly inadequate.

MR. MACSPORRAN: In the circumstances the fine was inappropriate, too much. The record of the District Court shows that the police advised the respondent to surrender his firearm or he would be charged. He did so and was charged. Only an air rifle. Dangerous but not so much as an explosive - missile rifle. Appellant had kept the rifle hidden for two years after very brief use of it to fire at birds.

I agree in principle that firearms should be prohibited in Nauru. Maximum sentences of fine is only \$40. The penalty section was not altered when the statute was amended.

MR. LANG: Only excision of provisions relating to liquor. No amendment to provisions relating to firearms.

MR. MACSPORRAN: Penalty could have been changed if legislature had thought fit.

Magistrate correct in exercising his discretion as he did.

MR. LANG: It is possible that the respondent merely surrendered the firearm because he knew that, if he did not, he would be in most serious trouble.

COURT: How old is the respondent?

MR. MACSPORRAN: 17.

JUDGMENT:

The possession of firearms in Nauru doubtless should be regarded as a serious matter, although the Courts would be better able to take that view if the legislature were to increase the penalty which can be imposed. A maximum fine of \$40 is certainly not indicative of a serious view being taken of the matter by the executive or the legislature.

The circumstances of this case, however, contain many mitigating features. First, the respondent is only 17, has no previous convictions and is apparently in regular employment. Second, he apparently has not used the weapon except for a brief period, when he was 15 years old, to shoot at birds. Third, the weapon is an air-rifle not a rifle giving explosive bullets or shots. Finally, and most important, the respondent surrendered the weapon voluntarily. He did so after being warned that, if he did not, "he would be charged". The information he could reasonably have been expected to draw from that was that, if he did, he would not be charged. He could, instead of handing the weapon to the police, very easily have disposed of it on topside where it's ownership could not have been traced to him but some other person might have come into possession of it.

In view of all those mitigating circumstances I consider that the sentence imposed was not wrong in principle and the appeal is dismissed.

I should make clear, however, that in other circumstances possession of a firearm may well warrant a sentence of immediate imprisonment, even for a first offender. Indeed, this Court some years ago upheld a sentence of six months' imprisonment in such a case.

I.R. THOMPSON  
Chief Justice

13/1/78

\*(Sentence: \$10 fine.)