



IN THE SUPREME COURT OF NAURU

AT YAREN DISTRICT
[CRIMINAL JURISDICTION]

Criminal Case No. 10 / 2017

BETWEEN

Republic

Plaintiff

and

Deina Junior Thoma

Defendant

Before: Vaai J

Date of Judgement: 5th December 2017

Case may be cited as: *Republic v Deina Junior Thoma*

APPEARANCES:

Counsel for the Plaintiff:

L Tabuakuro

Counsel for the Defendant:

S Valenitabua

Sentence

Introduction

1. The defendant aged 19, was found guilty of the charge of indecent assault in relation to a young girl aged 7 years. The offence carries a maximum penalty of 15 years imprisonment.

2. The indecent act complained of in the offending was a love bite to the neck. Nature and circumstances surrounding the offending are fully canvassed in the courts written ruling. Briefly, on the morning of the incident the young girl walked next door to the house of the defendant's family to play with the defendant's younger siblings. She went into one of the rooms where the accused and his siblings were. The defendant was lying on his stomach doing some drawings. He had two pens and the young girl wanted one of the pens, which the defendant refused to give. She then got into the back of the defendant and attempted to take the pen.

During the course of the short playful struggle, the accused bit the neck and stomach of the young girl.

3. Other than the pain she felt at the time the young girl thought nothing and took no notice of the bite. She continued to play with the other children. It was not until later on when the mark on the neck was visible and seen by the young girl's aunt that the incident was addressed and subsequently reported to the police.

The Defendant

4. A pre-sentence report was obtained. It describes the defendant as a single, second eldest child of a family of ten, currently employed and living with his parents.
5. Despite his relatively young age his parents have shouldered him with some family responsibilities like looking after his younger siblings at times, assisting with preparing food and taking the younger ones to school occasionally.
6. Outside of the family environment, he is described as an active member of the Orro Congregational Church at Aiwo District. He also loves sport, in particular basketball.
7. In relation to the offence, the report says:

“Daina Thoma expressed a deep regret and remorseful symptoms to seek clemency of his unlawful behavior; however he works very hard to hide his premature behavior by showing that he is matured to accept the consequences of his actions.”

Submissions by the Prosecution

8. In her written submissions, counsel for the prosecution suggested and invited the court to impose a custodial sentence of 12 months imprisonment based on the tariff imposed on similar cases and on the relevant sections of the Crimes Act 2016. It was contended that custodial sentence is warranted to give effect to sections 278 and 279 Crimes Act, and to highlight the aggravating features of the offending, namely the very young age of the young girl and the breach of the trust the young girl had on the defendant.

9. One of the cases cited by counsel was "Republic v AB NRSC 12" in which the defendant was sentenced to 12 months imprisonment for indecent assault which involved causing love bites to the neck of a 7 year old girl.

Submissions by the Defence

10. Counsel urged the court to adopt the sentencing approach provided by Section 277 Crimes Act 2016 and to impose a sentence other than imprisonment. Since the nature of the offending, which it was submitted is at the lower end of the scale, and the circumstances of the defendant, a non-custodial sentence is warranted.
11. Counsel also addressed "Republic v AB" which he submitted was distinguishable on the facts.

Discussion

12. I agree with defence counsel that "Republic v AB" can be distinguished. In the first place the defendant was 35 years. Secondly the offending in "Republic v AB" was pre-meditated. And finally the indecent assault in "Republic v AB" was part a series of much more serious sexual offending on the 7 year old victim.
13. The defendant Thoma is a first offender he has exhibited remorse and he admitted his offending to the police when he was apprehended and questioned.
14. Some of the purposes of offending required under section 178 are;
- (i) To protect the community from the offender
 - (ii) To promote the rehabilitation of the offender
 - (iii) To make the offender accountable for his action

I have mentioned the above 3 factors which I consider to be appropriate in the present sentencing.

15. With the present day development of the law, in common law jurisdiction in relation to young offenders the courts are urged and encouraged to treat a young offender in a way that promotes his or her sense of dignity and worth; must reinforce the young person's respects for the human rights and freedom of others. At the same time it must also impose a sentence which takes into account the young age, and desirability of promoting the young person's re-integration and the young person assuming a constructive role in society.
16. There is a benefit to the community in ensuring that the chance of rehabilitation is not shut out, and in reducing the prospect of a young offender emerging from prison a more hardened criminal than he went in.
17. This defendant is truly remorseful; he has despite his young age managed his responsibilities within his family; his offending was out of character and was not

premeditated; he has always been and still is in full employment and he is actively involved in his church activities. He appears genuinely motivated to reform to the community and him.

18. The impact of his offending on the young victim is virtually insignificant. This is highlighted in both the court's written ruling and the victim's impact reports.

Result

- (a) Pursuant to section 22(2) Criminal Justice Acts 1999 the defendant is ordered to perform 150 hours of community work under the supervision of the Acting Probation Officer.
- (b) He will take your instructions from the Probation Offer in relation to the performance of his work.
- (c) Upon completion of his community service he will report to his instructor who will in turn notify the registrar.
- (d) No conviction will be entered against his name.



A handwritten signature in blue ink, appearing to read "Rapi Vaa".

JUDGE RAPI VAAI