



**IN THE SUPREME COURT OF NAURU**

[CRIMINAL JURISDICTION]

Case No. 77 of 2016

**THE REPUBLIC OF NAURU**

**v.**

**FORMAN ROLAND**

Before: Crulci J  
For the Prosecution: F. Lacanivalu  
For the Defence: R. Tagivakatini

Dates of the Hearing: 21 February 2017  
Date of Sentence: 23 February 2017

**CATCHWORDS** - *Criminal Law – Robbery s. 158 (a) and (b) Crimes Act 2016 – Maximum Penalty 12 years imprisonment – Division 15.3 Sentencing, Crimes Act 2016 - Deterrence - Guilty Plea – No Prior Convictions – Victim Refugee - Aggravating Features*

## SENTENCE

1. Forman Roland you pleaded guilty to the offence of Aggravated Robbery, contrary to section 159(c) of the *Crimes Act* 2016. The offence carries a maximum penalty of 14 years imprisonment.

### **159 Aggravated Robbery**

A person commits an offence if the person:

...

- (c) commits robbery and, immediately before, at the time of, or immediately after committing the robbery, causes physical harm to another person.

Penalty: 14 years imprisonment.

2. On the 14<sup>th</sup> of August, 2016 around 4:30 a.m. you were sitting with MA<sup>1</sup> a refugee from Pakistan and two of his refugee friends at the Tiger Gas Station smoking cigarettes.
3. About half an hour later the victim decided to leave and was offered the use of a motorbike by one of the other refugees. You asked if the victim could give you a lift to your girlfriend's house which was on the way. The victim agreed and the two of you left with you riding on the back of the motorbike.
4. You directed the victim which way to go making a number of turns and then having arrived at an isolated place, instructed the victim to stop. From your position behind the victim you twisted his head like you were trying to break his neck and you both fell to the ground. Whilst on the ground you set about trying to strangle MA and in attempting to defend himself he pushed you in the face and you bit his hand.
5. MA pleaded with you to let him go and offered you money to stop, but you said you didn't want his money but just to kill him. The struggle continued resulting in you punching MA until he was unconscious on the ground.
6. You made off with the motorbike, MA's mobile phone; and wallet containing \$120 cash. I am told that the motorbike was valued at \$2700, the phone at \$580, and the wallet \$15.00.

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<sup>1</sup> The victim is refugee: it is appropriate to use initials to preserve his identity from authorities in his home country.

7. On regaining consciousness the MA noticed the items were missing; he started to walk back to Tiger Gas Station. Along the way the victim lost consciousness again and was found by his friend who saw he had injuries to his elbow, face and neck. The MA's injuries included swelling to his right eye, bruises on his mouth and the right side of his forehead, and a cut to his left hand ring finger. MA was taken to the RON hospital for treatment
8. You were arrested by the police the next day, charged with the offence and spent seven days remanded in custody. You have pleaded guilty to this matter, and asked if you could apologize in Court to MA, as up until now one of your bail conditions was no contact with him so you had been unable to apologize.
9. Counsel for the prosecution listed the following as aggravating features:
  - a) The offence is committed in the early hours of the morning when it was dark;
  - b) The level of violence was serious and the victim became unconscious;
  - c) The defendant was drunk when he committed the offence;
  - d) The stolen goods were not recovered, the total value is in the region of \$3400;
  - e) The robbery took place in an isolated area;
  - f) The victim is a refugee.
10. The prosecution asks the Court to consider making a compensation order<sup>2</sup> in favour of the victim for the value of the goods stolen. Counsel submits that a custodial sentence is warranted both on the facts of the offence and as a deterrent to other would-be offenders. Council cites the following cases in support of a prison term in the 3 to 4 year range: *Republic v Agege*; *Republic v Kepae*; and *Republic v Olsson*<sup>3</sup>.
11. In his victim impact statement, MA informs the Court that he has recovered from his physical injuries. The offence committed against him however has had an impact on his relationships in general with the Nauruan community, in that MA is reluctant to trust people. Furthermore he used to work, and was happy to accept night shifts, but since this incident he feels safer to be at home before midnight.

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<sup>2</sup> *Renack Mau, Pisoni Bop & John Jeremiah* [2015] NRSC 20

<sup>3</sup> [2012] NRSC 8; [2009] NRSC 4; and [2009] NRSC 20

12. Counsel has said on your behalf that you had no previous convictions, you are young man living with your mother and income from your work helps to support the family. At the time of the offence you were affected by alcohol but have since that time you have reflected on your drinking as you instructed your counsel that this kind of behaviour is not something that you wish to repeat and you consider it immature and stupid. You promise the Court that you will not re-offend and seek the opportunity to reform.
13. It is submitted on your behalf that taking all matters into consideration including that no weapon was used and your genuine remorse, a period of 2 to 3 years imprisonment is appropriate in all the circumstances.
14. A pre-sentence report from the Acting/Chief Probation Officer<sup>4</sup> informs the Court that you are now 24 years of age, one of five children. Your father moved out after your parents' separated a few years ago. You assist your mother financially to maintain the family. I am told that you occasionally drink alcohol but not to excess. You expressed your sincere remorse to the Acting/ Chief Probation Officer and appeared contrite and apprehensive about your situation.
15. The Court is mindful of Division 15.3 Sentencing in the *Crimes Act* 2016 and notes that with similar matters previously before the Court<sup>5</sup> targeting vulnerable members of the community the sentences reflected the need for a general deterrence.
16. Refugees living in Nauru are in the main without the support of their family and social networks. They may feel particularly vulnerable in a new country where they don't speak the language or share the same customs. Behaviour such as yours creates a climate of fear and distrust which is not conducive to social harmony.
17. Part of the Court's role in sentencing is to send a message of deterrence, that offending against vulnerable members of the community will not be tolerated<sup>6</sup>.
18. The Court notes that although you have apologized to the victim in open Court, there has been no attempt at voluntary restitution for his considerable

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<sup>4</sup> A/Chief Probation Officer Raelytta Daoe, Report dated 22 February 2017

<sup>5</sup> *Republic v Agege* [2012] NRSC 8; *Republic v Tom* [2012] NRSC 7


<sup>6</sup> Section 278 **Purposes of Sentencing**, *Crimes Act* 2016


financial loss and injury over the last six months since the offence was committed. You have been employed and earning money during this time.

19. The Court considers the starting point for the offence to be three years imprisonment. In view of the aggravating features that your offence was against a minority group, that you deliberately took the victim to an isolated area, that you assaulted him until he became unconscious and that there has been no restitution of the goods stolen, the Court increases the penalty to five years.
20. Taking into account your remorse, your guilty plea and previous good character the Court reduces the sentence by twelve months to four years imprisonment.
21. The Court makes no order for compensation, viewing this as impracticable due to the length of your prison sentence.

#### ORDER

22. On Count One - Aggravated Robbery you are sentenced to Four years imprisonment.
23. The sentence of four years imprisonment is to include the 9 days served on remand.

  
Judge Jane E Crulci



The seal is circular with a blue border. The outer ring contains the text 'THE SEAL OF THE SUPREME COURT' at the top and 'REPUBLIC OF NAURU' at the bottom. In the center is a sunburst emblem.

Dated this 23 February 2017