



IN THE DISTRICT COURT OF NAURU

CRIMINAL JURISDICTION

Crim Case No. 66 of 2018

REPUBLIC

V

CLINT DEIDENANG

SENTENCE

Before: RM P. R. Lomaloma

Prosecutor: Filimone Lacanivalu

Defence: Ravunimasei Tagioakatini

Date of Hearing 14th August 2018

Date of Sentence: 16th August 2018

Catchwords: *Assault Occasioning Bodily Harm; sentence, delay of 3 years 1 month from admission of offence to charging; delay as a mitigating factor; rehabilitation.*

Introduction

1. The accused pleaded guilty to one count of assault occasioning bodily harm contrary to section 339 of the Criminal Code 1899.

The Facts

2. On the 13th of June 2015, the complainant, Joel Waqa was driving towards Aiwo District when you drove in front of him at the basketball court in Denig District, stopped your vehicle in front of his vehicle and walked towards his vehicle. You then aggressively demanded through his vehicle window that he drop you at your residence. There were two young boys with the complainant and he feared for their safety as you were drunk. When you let go of the vehicle window, the complainant

drove away, attempting to get away from you but you held on and tried to open the door of the moving vehicle. The complainant stopped the vehicle but his attempt to get away made you angry. The complainant got out of his car and you approached him and punched and kicked him several times. The complainant did not retaliate and fell to the ground. The defendant's cousin, Livanna Spanner saw you punching and kicking him and she intervened and stopped you.

3. The complainant was medically examined the next day and it was confirmed that he sustained hemorrhage of the left eye, superficial wound of 1 cm under the eye with surrounding haematoma and swelling on the left cheek. You were arrested and caution interviewed on 15th June 2015 and you admitted punching the defendant.
4. You admitted these facts and I convicted you as charged.

Seriousness

5. The starting point in any sentence is to look at the objective seriousness of the offending by looking at the culpability or blameworthiness of the offender and the harm caused, intended or likely to be caused to the victim. This was an intentional act and therefore highest on the culpability scale. The harm caused to the complainant including a haemorrhage or bleeding of the eye and other injuries as set out in the summary of facts. A blow to the eye is always treated seriously by the Court because of the danger of the risks involved with such an important organ. Similarly, punches and kicks to the head are inherently dangerous. I would rate your assault in this case as about the mid-level on the seriousness scale.
6. This offence can be committed in so many ways and the resultant harm can be so varied that little guidance can be obtained by looking at the sentences for this offence meted out by the Courts in the past. In Yardley v Betts (1979)¹ King CJ said this about sentences for assaults:-

Assaults vary very greatly in seriousness. Some result in injury to the victim and some do not. Some are committed under provocation in the heat of the moment and others are wanton and premeditated attempts to impose the offender's will on the victim by force. Some are mere man to man altercations and others are terrifying and

¹ 22 SASR 108 at 113

cowardly examples of mass violence. Many other variations could be mentioned. The offenders vary from the normally law abiding person who is caught up in a situation of stress which erupts into violence, to the habitual bully and thug. In some cases a term of imprisonment may enhance rather than diminish the prospects of the offender avoiding crime in the future. In other cases, a term of imprisonment may turn a usefully employed person into a frustrated unemployed person, may deprive the offender of the best and most stabilising influences in his life by disrupting a good family situation, and may increase a propensity to crime by placing him in the company of criminals. The need for a deterrent punishment will vary according to the circumstances of the offence.

A consideration of these factors leads to the conclusion that cases of assault require individual assessment and treatment. In my opinion there can be no presumption one way or the other as to whether imprisonment is the appropriate way of dealing with any particular case. A judicial policy which were to embody such a presumption in respect of assaults generally, or assaults which could be characterised as "serious," or assaults where "some injury is caused to the victim," would not in my view be justified. It is worth pointing out that the degree of injury suffered by the victim is not in every case a satisfactory measure of the gravity of the offence or the culpability of the offender."

The Aggravating Factors

7. The aggravating factors of your offending are:-
- a. It was not provoked;
 - b. You kicked the complainant—kicking is always more dangerous, especially with shoes on;
 - c. The assault was sustained and you were only stopped by the complainant's cousin; and
 - d. You assaulted the complainant in front of two young boys.

Personal Circumstances and Mitigating Factors

8. You are 45 years old, married with 6 children aged between 9 and 21 years. You have a grandchild who is 2 months old. You reside at Meneng with your family. You are currently working as a private security and can earn between \$250 to \$500

per month, depending on the shift hours you work. Your wife works and earns \$300.00 per fortnight. Your son is a maintenance worker at Meneng Hotel and he earns \$300-\$400 per fortnight.

9. In mitigation, your counsel submits that you are remorseful and you seek the Court's forgiveness; that you pleaded guilty at the first opportunity and saved the time for a trial; that you are a first offender; that you promise not to re-offend; that you co-operated with Police when you were interviewed on the day after the offence in 2015.
10. I agree with your counsel that there has been considerable pre-charge delay in this case. In fact it took 3 years and 1 month after you admitted the offence before this charge was filed against you on 23 July 2018.

Delay as a Mitigating Factor

11. In the case of R v Merret [2007]², Maxwell P of the Supreme Court of Victoria said:-
[35] The relevance of delay lies rather in the effect which lapse of time—however caused—has on the accused. Delay constitutes a “powerful mitigating factor.” In particular it focuses attention on issues of rehabilitation and fairness. As the Court of Criminal Appeal of Western Australian said in 1983 in Duncan v The Queen:

Where, prior to sentence, there has been a lengthy process of rehabilitation and the evidence does not indicate a need to protect society from the applicant, the punitive and deterrent aspects of the sentencing process should not be allowed to prevail so as to possibly destroy the results of that rehabilitation.

The very fact of the long delay in bringing the matter to court which led the applicant to have this matter hanging over his head for nearly four years is rightly prayed for on his behalf.”³

12. In Sabra v Regina [2015]⁴ the NSW Court of Criminal Appeal had to deal with an appeal from a sentence where there was a delay of 17 months between admissions by the appellant and the charge being laid. Bellew J, with whom the other two judges of appeal concurred said:

² VSCA1; (2007) 14 VR 392

³ Quoted in *Ross on Crime*, 6th Edition, Mirko Bagaric, Thompson Reuters, 2013 at page 452, para 4110.

⁴ NSWCCA 38 (25 March 2015) at [33]

Delay which is not attributable to the offender, of course, constitutes "a powerful mitigatory factor": R. v Liang and Li (1995) 124 F.L.R. 350 at 356; 82 A. Crim. R. 39 at 45.

Further, there is, in my opinion, a serious incongruity between the assertion that an offence is serious and that the courts must, through the sentences they impose, endeavour to limit its incidence, on the one hand, and such a leisurely progression of the criminal justice proceedings which follow its commission that literally years pass before the matter comes before the court, on the other. For a number of reasons, the investigation and prosecution of criminal conduct should be conducted as quickly as is reasonably practicable if the objectives of the system are to be attained.

Additionally, a legitimate sense of unfairness can develop when the criminal justice process proceeds in what can be perceived as too leisurely a fashion."

13. ***Sabrana v Regina***⁵(supra) was an application for leave to apply out of time and the Court allowed the application on the grounds of delay.

14. A strong mitigating factor in your case is that for 3 years and 2 months you had the fear and the stress of this sentence hanging over you. In that time, you have not re-offended and you have re-habilitated yourself. The delay is unexplained and it certainly appears not to be your fault. From the objective seriousness of your offending and the aggravating factors, I would have sentenced you to an immediate custodial sentence.

15. In ***Republic v Gadabu***⁶ Millhouse CJ sentenced the defendant to 18 months imprisonment for arson, which carries a maximum of life imprisonment because of the delay of 11 months awaiting his sentence. In that case, the defendant had burnt down a house occupied by his sister.

The Sentence

16. I have taken account of what I have said above about your culpability, the aggravating factors, the harm suffered by the victim and the mitigating factors of your offending less delay and consider a custodial sentence is appropriate. I consider a sentence of 6 months imprisonment is appropriate to the facts.

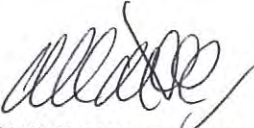
⁵ NSWCCA 38 (25 March 2015) at

⁶ [2010] NRSC 3; Criminal Case 03 of 2009 (25 March 2010)

17. There has been substantial delay in your case that is not your fault. The maximum sentence for this offence is 3 years and I will suspend your sentence for 12 months under section 656(1) of the Criminal Code on the following conditions:-
- a. You are to enter into a good behavior bond in the sum of \$500.00;
 - b. In addition, you are to pay compensation to the complainant in the sum of \$500.00 pursuant to section 656(3) of the Criminal Code 1899.

Orders

18. The defendant:
- a. is sentenced to 6 months imprisonment suspended for 12 months;
 - b. Shall enter into a good behavior bond in the sum of \$500 for 12 months;
 - c. Shall pay into Court \$500.00 as compensation to be paid to Joel Waqa.
19. 14 days to appeal.


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Penijamini R. Lomaloma
Resident Magistrate

