



IN THE DISTRICT COURT OF NAURU
CRIMINAL JURISDICTION

Criminal Case No. 8/2018

THE REPUBLIC

Complainant

V.

JUDE REWERU

Defendant

Prosecutor: Ms. Laisani Tabuakuro
Defence: Mr. Ravunimasei Tagivakatini
Date of Hearing: 22 May 2018
Submissions: 29 May 2018
Sentence: 1st June 2018

SENTENCE

Catchwords: *Sentence—Intentionally causing harm; Section 74 Crimes Act 2016; young offender; first offender; iron pole used as a weapon; assault to the head;*

Introduction

1. You pleaded guilty one count of Intentionally Causing Harm contrary to section 74 (a)(b)(c)(ii) of the Crimes Act 2016. You pleaded guilty as soon as the summary of facts was provided.

The Facts

2. The summary of facts which you admitted states that on the 6th of March 2017, you went to the home of Eaeor Atsime at Yaren District and assaulted him as he lay asleep in a hut nearby. The complainant, who had been drinking, woke up and saw you assaulting him with your fist and “a short iron pole” which you used to strike the complainant on the head several times. During the assault, a witness heard you accusing the complainant of entering your house and peeping. The witness, Janeson Dageago, said you did not give the complainant time to respond to the accusations. The complainant covered his face with his hands to avoid any injuries as he lay on the floor of the hut. Janeson Dageago pleaded with you to stop assaulting the complainant but you did not stop so Janeson left to get help from his family members. When he returned, you had left. Later that afternoon, you were arrested at your house. You were caution interviewed on 13th March 2017 and admitted that you had intended to assault the complainant and that you had used a short iron pole to strike the complainant on his head several times.
3. The complainant was examined a few hours after the assault at the RON Hospital on 6th March 2017, and the Medical Report showed that he suffered a 6cm x 1 cm laceration on the occipital-temporal region on the right side of his side and suffered a 4cm x 1 cm laceration on the occipital-temporal region on the left side of his head. The lacerations required a total of 7 stitches to close. There were bruises noted also on the complainant’s right forearm, left arm and left forearm.
4. Defence counsel submitted that you had been alerted by your niece that the complainant was prying around your house and trying to steal something and he ran away when he saw her.

Counsel added that you were not at home when your niece called you and as soon as you were informed, you were so enraged that you decided to go directly to the complainant's house to confront him and there assaulted him.

5. You were a Police officer at the time of the assault and you have been interdicted on half pay since the incident. After you admitted the summary of facts, I found you guilty as charged and will address later herein whether a conviction should be entered against you or not.

The Submissions

6. I have been greatly aided in this sentence by the submissions of counsel for both sides and I thank them for the assistance. It is obvious that the Prosecutor has gone to great lengths to research sentences for this offence in the Magistrates Courts in Victoria, Australia. Unfortunately, the maximum sentence there for this offence is 10 years imprisonment whereas here it is 7 years. However, the statistics show a wide variation of sentences given between 2013 and 2016 for 1,907 cases. These reflect the many different ways this offence can be carried out and the numerous factors that the Court needs to take into account, including the circumstances of the offending, the offender and the victims. In the Victorian statistics, only 33% of the defendants were sentenced to jail and the majority of the sentences (27.5%) were between 3 and 6 months. The longest prison term imposed was over 36 months.
7. However, in *Barbaro v The Queen; Zirilli v The Queen*¹ the High Court of Australia by a majority decision said that it would be impermissible for the prosecution to make submissions on the range of sentences available to the Court in sentencing submissions. The majority identified the role of the prosecutor in sentencing is to put the facts before the court whose job it is to exercise its discretion by applying the principles of sentencing to the facts. By suggesting the range of sentences from other cases, the prosecution is expressing an opinion on what the outer bounds of the sentence should be and therefore it is intruding into the task of the sentencing judge. The majority said however that the range of sentences should be used as a yardstick:

*As the plurality pointed out in Hili v The Queen in seeking consistency sentencing judges must have regard to what has been done in other cases. Those other cases may well establish a range of sentences which have been imposed. But that history does not establish that the sentences which have been imposed mark the outer bounds of the permissible discretion. **The history stands as a yardstick against which to examine a proposed sentence. What is important is the unifying principles which those sentences both reveal and reflect. And as each of Buchanan JA and Kellam JA rightly observed[in MacNeil-Brown, the synthesis of the "raw material" which must be considered on sentencing, including material like sentencing statistics and information about the sentences imposed in comparable cases, is the task of the sentencing judge, not counsel.***²

[references deleted] (emphasis mine)

8. In *The Queen v Pham [2015] HCA 39*³, the High Court of Australia, a few months after *Barbaro* (supra) was decided said at paragraph 27:

¹ [2014] HCA 2, [2014] HCA 2 (12 February 2014) particularly at paragraphs [6] – [7], [39], [40] & 41 per (French CJ, Hayne, Kiefel, Bell and Gageler JJ)

² Ibid at para 41.

³ (4 November 2015)

Previous decisions of this Court have laid down in detail the way in which the assessment of sentences in other cases is to be approached. It is neither necessary, therefore, nor of assistance to repeat all of what has previously been said. But, in view of the way in which the Court of Appeal approached the task in this case, it is appropriate to re-emphasise the following:

(1) Consistency in sentencing means that like cases are to be treated alike and different cases are to be treated differently.

(2) The consistency that is sought is consistency in the application of the relevant legal principles.

(3).....

(4) Such consistency is not synonymous with numerical equivalence and it is incapable of mathematical expression or expression in tabular form.

(5) For that and other reasons, presentation in the form of numerical tables, bar charts and graphs of sentences passed on federal offenders in other cases is unhelpful and should be avoided.

(inapplicable sub-para (3) deleted)

9. I accept the submissions of the prosecutor in this case as providing the yardstick which this Court will use to assess the proposed sentence.

The Charge

10. You are charged under section 74 (ii) of the Crimes Act which sets the maximum sentence at 7 years imprisonment.

11. Section 279 of the Crimes Act 2016 sets out the factors that the Court must take into account in sentencing an offender:-

279 Sentencing considerations—general

(1) In deciding the sentence to be passed, or the order to be made, in relation to a person for an offence against a law of Nauru, a court must impose a sentence or make an order that is of a severity appropriate in all the circumstances of the offence.

(2) In addition to any other matters, the court must take into account whichever of the following matters are relevant and known to the court:

(a) the nature and circumstances of the offence;

(b) any other offences required or permitted to be taken into account;

(c) if the offence forms part of a course of conduct consisting of a series of criminal acts of the same or a similar character—the course of conduct;

(d) any injury, loss or damage resulting from the offence;

(e) the personal circumstances of any victim of the offence;

(f) the effect of the offence on any victim of the offence;

(g) any victim impact statement available to the court;

(h) the degree to which the person has shown contrition for the offence by taking action to make reparation for any injury, loss or damage resulting from the offence or in any other way;

(i) if the person pleaded guilty to the charge for the offence—that fact;

(j) the degree to which the person cooperated in the investigation of the offence;

(k) the deterrent effect that any sentence or order may have on the person or on anyone else;

(l) the need to ensure that the person is adequately punished for the offence;

(m) the character, antecedents, age, means and physical or mental condition of the person;

(n) the prospects of rehabilitation of the person;

(o) the probable effect that any sentence or other order under consideration would have on any of the person's family or dependents;

(p) if the offence was committed by an adult in circumstances where the offending conduct was seen or heard by a child (other than another offender or a victim of the offence)—those circumstances.

(emphasis mine)

The Seriousness or Gravity of the Offending

12. The starting point is to look at the gravity of the offending which is the measure of the criminal fault of the defendant and the harm caused, intended or likely to have been caused by the offending. The gravity of the offending is sometimes called the seriousness of the offending. Sections 16-21 of the Crimes Act define the fault elements of the offending and explains each in detail. The fault elements start with negligence at the bottom, followed by reckless indifference to consent, recklessness, knowledge and with intentional acts at the top. This was an intentional act and therefore highest on the culpability scale.
13. The harm caused included the injuries that the complainant suffered which have been set out in the facts above. The injuries in the medical report are serious but that is not conclusive, as King CJ said in *Yardley v Betts (1979) 22 SASR 108* at 113;⁴
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."
14. His honour was there pointing out that sometimes you must look at the harm intended or likely to be caused by the assault as a measure of the gravity or seriousness of the offending. This measure of harm is important where the method of assault is more dangerous but where luck has intervened and serious injuries have been avoided.
15. I have taken account of the gravity of your offending and the harm caused and consider this to be at the middle level for this offence.

Aggravating Factors

16. The aggravating factors in this offending is the use of the iron pole, and the fact that being a policeman entrusted with enforcing the law, you have broken it.

Personal Circumstances

17. You were a full time policeman at the time of the offending although you have been interdicted and on half pay since you were charged. You are 23 years old, single and reside with your family at Yaren District. Defence Counsel submits that you wish to be rehabilitated and return and be reemployed in the Police Force or elsewhere in order to continue supporting your family.

Mitigation

18. In mitigation, your counsel submitted that you are a young first offender who pleaded guilty at the first opportunity; that you are remorseful and you promise not to reoffend. You fully cooperated with Police and admitted the offence to them. You have asked for a non-custodial sentence. There is no evidence that you have a habit of doing this.

The Sentence

19. In *Yardley v Betts (1979) 22 SASR 108* at 113;⁵ King CJ said this about sentences for assaults:-

⁴ 1 A Crim R 329(CCA) at 334.

⁵ 1 A Crim R 329(CCA) at 334.

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 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."

(emphasis mine)

20. I agree with the then Chief Justice of South Australia that the court should look at the particular circumstances of each offending, the impact on the victim and the offender to determine the suitable punishment guided only by the factors set out in the sentencing provisions of the Crimes Act and the general principles of sentencing.

Sentence

21. I have considered the seriousness of your offending and the aggravating factors which take your offending to about the midpoint for this offence. I have taken account of your personal circumstances, in particular that you are in gainful employment as a Police officer who will lose your employment if convicted and sentenced to imprisonment. I have taken account of the purposes of sentencing in section 278 and the requirements of section 280 of the Crimes Act 2016 and consider that a custodial sentence is not appropriate in your case. You have however caused serious injuries to the victim of your assault and I therefore sentence you without a conviction to a fine of \$900.00. Further, you are to pay compensation to the victim in the sum of \$300.00.

Orders

22. You are fined in the sum of \$900.00 with 56 days to pay.
23. You are to pay the sum of \$300.00 into Court to be paid as compensation to the victim. The sum is to be paid within 14 days.
24. You have 14 days to appeal.


.....
PENIJAMINI RAVULOLO LOMALOMA
Resident Magistrate

