



IN THE DISTRICT COURT OF NAURU

Criminal Case No 87 of 2018

THE REPUBLIC

-v-

DEKAROA TEMITSI

SARCH HUBERT

For the Republic: DPP, Ronald B Talasasa
Defendant: Ravunimasei Tagivakatini
Submissions: 29th July 2019
Date of Sentence: 9th August 2019

Catchwords: *Risking serious harm to commit an offence—sentence. Child offender under the Child Protection and Welfare Act 2016.*

Introduction

1. You pleaded guilty to one count of “Risking serious harm intending to commit an offence” contrary to section 82(1)(a)(b)(i) (c) and (d) of the Crimes Act 2016. The maximum sentence for this offence is 10 years imprisonment which is reserved for the most serious offending.
2. The particulars allege that you two on 19 October 2016 at Nauru, intentionally engaged in a conduct with the intention to commit an offence and the conduct causes risk of serious harm to Saqib Jan Muhammed and you were reckless about causing the risk.
3. You were charged by summons on 18th October 2018, 2 years after the offending but it was not until 5 months later that your plea could be taken because either one or both of you would not be present in Court. The matter was ready for trial on 24th July when both of you pleaded guilty.

The Facts

4. The Statement of Facts which was read and tendered by the DPP states that on the 19th October 2016, the complainant, Saqib Jan Muhammed and another refugee who has now left Nauru and originally from Pakistan went to Capelle to buy groceries. They bought a knife from a Chinese store. They were on a motor bike and Saqib Muhammed was in the passenger seat. You two and 4 other people on 3 motor bikes followed the complainants who were on their way back to Fly Camp.
5. Your group caught up with the complainants on their bike before they reached Fly camp and one of your bikes overtook them and stopped in front, intending to block the road. The two of you on your motorbike came up behind the vehicle. At some point, one of you attempted to hit Mohammed Jan Saqib with an item that looked like a metal rod. The complainants however saw a gap between the bike in front of them and the side of the road and the driver attempted to drive through the gap and escape you but you hit him from behind with your motorbike and it fell. Muhammed Saqib and his companion became desperate and Muhammed pulled out the knife from his shopping bag intending to defend themselves. Within a minute, a bus came and you and your companions ran away.
6. You agreed to these facts when they were read out in court.
7. Your actions contravened section 82(1)(a),(b)(i),(c) and (d) of the Crimes Act 2016 which provides:-

82 Risking serious harm intending to commit offence or avoid apprehension

(1) A person commits an offence if:

(a) the person intentionally engages in conduct; and

(b) either of the following applies:

(i) the person intends to commit an offence;

(c) the conduct causes risk of serious harm to another person; and

(d) the person is reckless about causing the risk.

Penalty: 10 years imprisonment

8. Section 82 (2) then explains that it is not necessary to prove that you intended to commit a particular offence:-

(2) To prove for subsection (1)(b)(i) that a person intends to commit an offence, it is not necessary to prove that the person intends to commit a particular offence.

Seriousness

9. The starting point of your sentence requires the Court to look at the objective seriousness of your offending. This is determined by looking at your culpability or blameworthiness and the harm caused, intended or likely to be caused by the offending. This was an intentional act and therefore highest on the culpability scale.
10. Your actions it can be inferred, must have caused psychological harm to the victims as it forced them to risk injury by trying to force their motor bike past the other blocking bike in front and to cause them to get the knife out of the shopping bag to defend themselves. While you intended your actions, you were reckless about the harm caused or likely to be caused. Your actions could have likely caused serious injuries to the victims and some of you but it was only saved by the arrival of the bus.
11. I would therefore rate your offending at about just below the middle of the scale of seriousness for this offending.
12. This is the first sentence for this offence under the Crimes Act 2016 so there are no precedent sentences for the Court to rely on. Sentences for similar offences under the Criminal Code 1899 are not much use as the maximum sentences were much lower than under the Crimes Act 2016.

Aggravating Factors

13. The aggravating factors common to both of you for this offending are:-
 - a. The offence was committed as part of a group;
 - b. There is evidence of some preplanning as your actions were coordinated with the other 4 people in the other two motorbikes.
 - c. You targeted a particularly vulnerable group—the refugees;
 - d. You were armed with some sort of rod.

Personal Circumstances

14. Dekaroa Teimitsi, you were born on 28th May 1997 and you were 19 years and 4 months old at the time of the offending. You are now 22 years old, single and live with your parents at Aiwo District. You now work for Central Meridian Inc. as a labourer and you earn \$250 per fortnight.
15. Sarch Hubert, you are 19 years old now having being born on 23rd March 2000. At the time of the offending, you were 16 years and 9 months old. You are single and unemployed. You rely on your father who sends you remittances from New Zealand.

Mitigating Factors

16. The mitigating factors advanced by your Counsel and which I accept for both of you are:-
 - a. You are a young offenders,

- b. You were a first offenders at the time of the offending,
- c. You were acting under peer pressure,
- d. You are remorseful,
- e. You co-operated with police and attended a reconstruction with them, and
- f. Your motor cycle was impounded after the offending.

Custodial Threshold

17. For Dekaroa Teimitsi, you were a child under the CPWA 2016, and section 48 (b) of the Act states that the court should consider a sentence of imprisonment as a sentence of last resort. I have taken into account the maximum sentence for this offence and the circumstances of the offending and I consider that a custodial sentence is warranted.
18. For Sarch Hubert, I find also that your offending deserves a custodial sentence.

Your Sentence.

19. There are no other sentences for this offence as the Crimes Act 2016, under which you are charged, came into force in 2016. From my assessment of the objective seriousness of your offending, I would pick a starting point of 24 months for both your sentences. For the aggravating factors, I would increase your sentence by 6 months leaving a sentence of 30 months. From the mitigating factors, I would reduce your sentence by 8 months. This leaves a sentence of 22 month's imprisonment.
20. For your plea of guilty which saved the time for a trial and saved the victim from having to relive his ordeal, I would reduce your sentence by 7 months, leaving a sentence of 15 months imprisonment. I have treated your plea of guilty separately and reduced it by 7 months because section 279(2)(i) of the Crimes Act 2016 requires that I take that into account. Further it is to send a message to other offenders that a plea of guilty will attract a bigger discount than other mitigating factors.

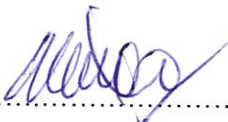
Conviction

21. After you pleaded guilty and you had agreed to the summary of facts, I found you guilty as charged. Section 277(a) of the Crimes Act 2016 gives the Court the power to sentence an offender without recording a conviction. From the seriousness of the offending, I consider that a conviction is necessary and I order that both of you be convicted of the offence charged.
22. There is no record of either of you spending time in custody for this offence.

Orders

23. You are both sentenced to 15 months imprisonment.

24. 14 days to appeal.



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PENIJAMINI R. LOMALOMA
Resident Magistrate

