



IN THE DISTRICT COURT OF NAURU

Criminal Jurisdiction

Criminal Case No. 33 of 2019

THE REPUBLIC OF NAURU

-v-

ELIJORIK DEKARUBE

Before: RM. P. R. Lomaloma
Prosecutor: Ms. Susan Serukai
Defence: Mr. Ravunimasei Tagivakatini
Sentencing Hearing: 11 & 16 November 2020
Sentence: 27 November 2020

SENTENCE

Catchword: *Sentence—Dangerous Driving occasioning grievous bodily harm contrary to section 67B (1)(d) and (2) of the Motor Traffic Act 2014.*

Introduction

1. The accused pleaded guilty to one count of dangerous driving occasioning grievous bodily harm contrary to section 67B (1)(d) and (2) of the Motor Traffic Act 2014.

The Facts

2. The facts are that on 1 December 2019, the accused was driving a motorbike when he overtook a car at Yaren District near the windsock. The victim was on a motor bike travelling in a clockwise direction. Just when the accused overtook the vehicle, he

collided with the victim's motorcycle travelling in the opposite direction. The accused fled the scene and the two females that were travelling in the car that the accused overtook attended to the victim while he was lying on the ground and called for the ambulance which took him to the hospital. They also called the police.

3. The victim suffered injuries which included a complete fracture of the 4th proximal phalanx of the right hand and deep laceration to the right foot on the dorsal aspect exposing the extensor tendon.
4. I ordered submissions on whether the injuries constituted grievous bodily harm as it was not defined in the Motor Traffic Act 2014 or the amendment that created the offence on 29th January 2016. I thank Counsels for their submissions.
5. At the time the Motor Traffic (Amendment) Act 2016 created this offence, the Criminal Code 1899 (Queensland) as adopted was in effect in Nauru. Section 1 of the Criminal Code defined "grievous bodily harm" as "*any bodily injury of such nature as to endanger or be likely to endanger life, or to cause or be likely to cause permanent injury to health.*" Parliament, in creating the new offence without defining the meaning of grievous bodily harm must have intended that the definition should be that in the Criminal Code so that there is a uniform definition of injuries arising from acts prohibited by the criminal law or motor accidents or however caused. I therefore find that the definition of "grievous bodily harm for the purpose of section 67B of the Motor Traffic Act 2014 as amended is "*any bodily injury of such nature as to endanger or be likely to endanger life, or to cause or be likely to cause permanent injury to health.*"
6. I find from the facts and the analysis of the law above, that the accused is guilty of the offence charged.

Seriousness.

7. The starting point for each sentence is to look at the seriousness of the offending, taking into account the culpability and the harm caused, intended or likely to be caused by his offending. The seriousness determines the starting point of the sentence.
8. Culpability or blameworthiness is the measure of the fault in these offences and starts with negligence followed by recklessness, knowledge and with intentional acts at the top of the scale.
9. The offender has been found guilty on the basis of a reckless act. The harm is as set out in the summary of facts above. The Victim Impact Assessment shows that the victim's right ring finger, which had been fractured in the accident had to be amputated and this fact should have been included in the summary of facts.
10. The victim states that as a result of the injuries, he cannot lift or shift heavy objects, and cannot tighten bolts and nuts and is seriously affecting him because he is a Fitter by

trade. The victim cannot use a lot of tools that he used to before the accident. Because of the injuries to his right foot, he cannot start his motor bike. This is the physical harm caused by the collision. The victim has lost the use of his motor bike, which was damaged beyond repair. The loss is between \$1,500 to \$1,800.

11. I would rate the seriousness of this offending at about the midlevel for this offence.

Aggravating Factors

12. The only aggravating factors for this offending is that the offender did not stop after the accident to check on his victim and render aid or at least call for assistance.

Personal Circumstances and Mitigating Factors

13. The Pre-sentence report compiled by the Probation Officer shows that the offender is 19 year old and single. He is the oldest of a family of 5 siblings with the youngest a 1 month old girl. He lives with his mother and his siblings. He is unemployed but he goes reef fishing and plays football to help support his family. He helps to look after the other children when his unemployed mother is away. The offender did not finish his secondary education.

14. The mitigating factors for this offending are:-

- a. The accused has expressed remorse for this offending;
- b. He has started to rehabilitate himself by limiting his time with his friends and has set his mind to avoid socializing with alcohol;
- c. He is a first offender;
- d. He is a young offender; and
- e. He pleaded guilty.

Tariff

15. This is a new offence and there are no precedents for the sentence. However, an examination of the sentences given for similar offences can be a guide on what sentences may be suitable.

16. The maximum sentence for this offence is 7 years imprisonment but this should be reserved for the really serious offending. I have assessed the seriousness of this offending at about the midpoint.

17. In *R v Rosen Ribauw*¹, the defendant was intoxicated and drove a vehicle dangerously causing the loss of 2 lives and injuries to others. He pleaded guilty to dangerous driving and was found guilty of 2 counts of manslaughter for which he was sentenced to 8 years

¹ [2017] NRSC 16; Criminal Case 51 of 2016 (25 February 2017))

imprisonment concurrent to each other; 2 counts of causing grievous harm contrary to section 320 of the Criminal Code 1899 for which he was sentenced to 3 years imprisonment and 6 months for the dangerous driving concurrent to the manslaughter sentences. The manslaughter charges were the head sentence.

18. The judgment in *R v Ribauw*² shows one victim had extensive injuries to his head, face, eye, arms and legs which clearly were very serious. The driver did not have a licence and had blacked out while driving. Instead of stopping he continued to drive and was driving in a zig-zag manner to have fun. The sentence of 3 years from a maximum of 7 reflects the seriousness of the offence
19. In *R v Paul Teutendberg*³ the accused was fined \$1,000 by this Court for Dangerous Driving, an offence carrying a maximum of 6 months imprisonment. In that case, the defendant was sober and the accident resulted from a momentary disability when he was blinded by the sun and did not see the motor bike which he collided with. He also paid compensation of \$1,500 to the victim and stopped to render aid to the driver and his passenger. He co-operated with police and pleaded guilty at the first opportunity.
20. In *R v Chrishilda Akubor*⁴, this Court sentenced the offender to 12 months imprisonment for recklessly causing harm contrary to section 75(a) (b)(c) and (ii) of the Crimes Act 2016. The injuries caused there were not as serious as in this case. The maximum sentence was 5 years imprisonment.

Custodial Threshold

21. The accused is a young offender and while rehabilitation is a very important principle is sentencing young offenders, I am convinced that a custodial sentence is necessary to deter the accused and others from this type of behaviour.

The Sentence

22. I have taken account of the seriousness of the offending and I would pick a starting point of 3 years imprisonment. For the aggravating factor, I add 3 months, taking the sentence to 39 months. For the mitigating factors, less the plea of guilty, I would reduce the sentence by 6 months, leaving a sentence of 33 months. For the plea of guilty, I reduce the sentence further by 6 months, leaving a sentence of 27 months imprisonment. I have reduced the sentence further for the guilty plea to encourage offenders to plead guilty and save the resources required for a trial.

² Ibid

³ NRDC Case No. 28 of 2017

⁴ [2020] NRDC Crim Case No. 18 of 2019

Orders

23. The offender is convicted of the offence of dangerous driving occasioning grievous bodily harm contrary to section 67B of the Motor Traffic Act 2014 and sentenced to 2 years and 3 months imprisonment. The offender spent 3 days in remand and his sentence is to be reduced by 3 days.
24. 14 days to appeal.


PENIJAMINI R. LOMALOMA
Resident Magistrate

