IN THE DISTRICT COURT OF NAURU
AT YAREN
CRIMINAL JURISDICTION

Criminal Case No. 40 of 2024

BETWEEN: **THE REPUBLIC OF NAURU**

PROSECUTION

AND: **MAWARIN DETABENE**

DEFENDANT

BEFORE: Resident Magistrate Mr. Vinay Sharma

DATE OF HEARING: 4 December 2024

DATE OF SENTENCING: 6 December 2024

APPEARANCE:

PROSECUTION: W Deiye

DEFENDANTS: R Tagivakatini

SENTENCE

INTRODUCTION

1. Mawarin Detabene pleaded guilty to one count of being in unlawful possession of 1.2 grams of cannabis in contravention of section 6(a) of the ***Illicit Drugs Control Act 2004*** ("the Act"). I am to sentence him for the offending for which he has pleaded guilty.

2. Mawarin is a first-time offender. There is no dispute as to the facts surrounding the offending and the personal circumstances of Mawarin.

3. There are no disputes as to the issues that I am to determine under section 279 of the ***Crimes Act 2016***. Further, there was no dispute as to the sentencing principles to be applied. Therefore, the issues before me for determination are:
   i. Should Mawarin be convicted as charged?
   ii. What is the objective seriousness of the offending?
   iii. What is the sentencing range?
   iv. Whether a custodial sentence is appropriate in the circumstances?
   v. Whether a record of conviction is to be entered against Mawarin?
   vi. What is the appropriate sentence to be handed down to Mawarin?

4. The following are my reasons for the sentence.

FACTS SURROUNDING THE CIRCUMSTANCES OF THE OFFENCE

5. On 24 October 2024 at around 1am onwards police officers were searching for a suspect in another matter. They arrived at Mawarin's place of residences in the course of their search. They approached children who were sitting outside Mrs. Jamilla Keppa's residence, Mawarin's neighbor to obtain information regarding the suspect they were searching for.

6. Senior Constable Kinte Harris got off the police vehicle and approached Mawarin who was sitting down. He observed Mawarin's eyes being flushed and red. He suspected that he was under the influence of cannabis. He could also smell a strong scent of cannabis coming from Mawarin. He further observed that there was a scissors lying on the ground together with some bottles that had been cut.

7. Senior Constable Harris asked Mawarin to stand up but Mawarin refused to stand up. He told him once again to stand up so that he could conduct a body search on him. Mawarin stood up and took out a zip-lock bag of cannabis from the black jeans he was wearing, he then threw it into the bush next to him, which was later recovered by police officers after a search of the bushes where Mawarin threw the zip-lock bag of cannabis.

8. Senior Constable Harris arrested Mawarin. On the same day Inspector Sareima Aremwa Obeta and Constabkle Valdon Dageago weighed and tested the seized cannabis. The test result was positive for cannabis, and the weight of the seized cannabis was 1.2 grams.

PERSONAL CIRCUMSTANCES OF THE DEFENDANT

9. Mawarin's personal circumstances are:

i. He is 21 years old and is single.

i. He resides with his mother and siblings. His father is serving a sentence of 7 years and 11 months for the offence of causing harm to a police officer.

ii. He is the eldest out of 6 siblings.

iii. Prior to being remanded in custody, he was employed as a groundsman for a private cleaning company at Camp 5, and earned $300 per fortnight.

iv. He assists his mother to support his family financially.

v. His mother has been facing financial difficulties ever since he was remanded in custody.

vi. He goes fishing to support his family.

vii. He is well liked in his community.

AGGRAVATING FACTORS

10. I find the following aggravating factors apply to Mawarin:

i. He tried to conceal the cannabis plants.

ii. He smoked cannabis in a place that was in view of members of the public.

iii. He smoked cannabis in close proximity to children.

MITIGATING FACTORS

11. I find the following mitigating factors in favor of the Mawarin:

i. There is a high chance that he will rehabilitate.

ii. He is remorseful.

iii. He does not have any previous convictions.

iv. He pleaded guilty at the earliest possible opportunity available to him.

SHOULD MAWARIN BE CONVICTED AS CHARGED?

12. Section 190(4) of the Criminal Procedure Act 1972 provides as follows:

> *Where the Court has recorded a finding under this Section that an accused is guilty of the offence charged, it shall, after hearing him or her, or his or her legal practitioner if any, as to any mitigating circumstances and any evidence thereof which may be advanced, either convict him or her and pass sentence on, or make an order against, him or her in accordance with the law or, if authorised by any written law to do so, discharge him or her without proceeding to conviction.*

13. Mawarin pleaded guilty to the offence of unlawful possession of 1.2 grams of cannabis. There is no material before that would justify a finding that the defendant not be convicted as charged. Therefore, I convict Mawarin as charged.

WHAT IS THE OBJECTIVE SERIOUSNESS OF THE OFFENDING?

14. The maximum penalty under Section 6(a) of the Act is a term of imprisonment for 10 years and a fine not exceeding $50,000.

15. In ***The Republic of Nauru v Perndergast***[1] the District Court made very useful observations with regard to the classification of illicit drugs and the seriousness of the different types of offending under section 6(a) of the Act. I adopt the same method of classification. Cannabis is a Class B illicit drug and is considered to be a soft drug, possession of cannabis attracts less severe sentences compared to sentences involving possession of hard drugs, such as methamphetamine, cocaine and heroin.

16. The defendant was in possession of a small amount of cannabis. In light of his personal circumstances, aggravating and mitigating circumstances, and his moral culpability, the court finds that the objective seriousness of the current offending is at the lower range of the level of seriousness.

WHAT IS THE SENTENCING RANGE?

17. The maximum penalty under section 6(a) of the Act is 10 years of imprisonment and a fine of $100,000. A fine is mandatory and must be made along side any other sentences that the court deems appropriate.

---

[1] [2018] NRDC 11; Criminal Case 85 of 2017 (27 September 2018) at [19]-[29]

18. Prior to ***R v Beadan & Another***[2], the sentencing range for offences involving possession of cannabis was a fine of $500 with a non-conviction to a fine of $1000 with a non-conviction. The cases forming this sentencing range were discussed in ***R v Beadan & Another***[3] where this court indicated that there was a gradual increase in the sentences issued for offences involving possession of cannabis to address the growing prevalence of this offence.

19. The sentence in ***R v Beadan & Another***[4] is the current baseline of the yardstick that this court may refer to when sentencing individuals for offences involving possession of cannabis. The court in that matter fined the defendants $1000. They were also ordered to carry out community service for 3 months, and were put on 1 year probation which was to commence from the expiry of the community service order.

20. In ***R v Daguape & Others***[5] the first and second defendants were fined $1500. A higher fine was considered for them because they gave cannabis to a juvenile.

SENTENCING APPROACH AND PRINCIPLES

21. Section 278 of the ***Crimes Act 2016*** provides the following purposes for sentencing an offender:

> ***278 Purposes of sentencing***
>
> *The purposes for which a court may impose a sentence on an offender are as follows:*
> *(a) to ensure that the offender is adequately punished for the offence;*
> *(b) to prevent crime by deterring the offender and other people from committing similar offences;*
> *(c) to protect the community from the offender;*
> *(d) to promote the rehabilitation of the offender;*
> *(e) to make the offender accountable for the offender's actions;*
> *(f) to denounce the conduct of the offender; and*
> *(g) to recognise the harm done to the victim and the community.*

22. Section 279 of the ***Crimes Act 2016*** outlines the considerations that the court must take into account when sentencing a person found guilty of an offence. The considerations under this section stems from Section 278 of the ***Crimes Act 2016***.

23. Section 280 of the ***Crimes Act 2016*** provides the sentencing considerations that must be taken into account when deciding whether a term of imprisonment is appropriate.

---

[2] [2024] NRDC 3
[3] n2
[4] n2
[5] District Court Criminal Case No. 13 of 2024

24. Section 281 of the ***Crimes Act 2016*** provides the considerations that the court must take into consideration as a far possible when deciding to impose a fine on a person found guilty of an offence.

25. Hunt CJ at CL in the Court of Criminal Appeal of NSW in ***R v MacDonell***[6] stated that:

> *The sentencing procedures in the criminal justice system depend upon sentencers making findings as to what the relevant facts are, accepting the principles of law laid down by the Legislature and by the courts, and exercising a discretion as to what sentence should be imposed by applying those principles to the facts found.*

26. Section 278 of the ***Crimes Act 2016*** adopts the common law principles of sentencing as was found in ***Veen v The Queen (No 2)***[7] with reference to a similar sentencing provision in Australia. In that case Mason CJ, Brennan, Dawson and Toohey JJ in their judgment in the High Court of Australia made useful observations with regard to the interaction between the different sentencing purposes:

> *... sentencing is not a purely logical exercise, and the troublesome nature of the sentencing discretion arises in large measure from unavoidable difficulty in giving weight to each of the purposes of punishment. The purposes of criminal punishment are various: protection of society, deterrence of the offender and of others who might be tempted to offend, retribution and reform. The purposes overlap and none of them can be considered in isolation from the others when determining what is an appropriate sentence in a particular case. They are guideposts to the appropriate sentence but sometimes they point in different directions.*[8]

27. Further, the High Court of Australia in ***Muldrock v The Queen***[9] reconfirmed the common law heritage of the relevant provision:

> *The purposes there stated [in s 3A] are the familiar, overlapping and, at times, conflicting, purposes of criminal punishment under the common law [Veen v The Queen (No 2) at 476–477]. There is no attempt to rank them in order of priority and nothing in the Sentencing Act to indicate that the court is to depart from the principles explained in Veen v The Queen (No 2) [at 476] in applying them. [Relevant footnote references included in square brackets.]*

28. Having referred to the cases above on the application of the purposes for sentencing, I

---

[6] (unrep, 8/12/95, NSWCCA) at [1]
[7] (1988) 164 CLR 465
[8] ***Veen v The Queen (No 2)*** (1988) 164 CLR 465
[9] (2011) 244 CLR 120 at [20]

now emphasize on how the principle of proportionality as a fundamental sentencing principle guides and binds the balancing exercise of a sentencer with regard to the various purposes of sentencing referred to in Section 278(b)(c)(d)(e)(f) & (g) of the ***Crimes Act 2016***. In this regard Howie J, with whom Grove and Barr JJ agreed, made the following observations in the Court of Criminal Appeal of NSW in ***R v Scott***[10]:

> *There is a fundamental and immutable principle of sentencing that the sentence imposed must ultimately reflect the objective seriousness of the offence committed and there must be a reasonable proportionality between the sentence passed and the circumstances of the crime committed. This principle arose under the common law: R v Geddes (1936) SR (NSW) 554 and R v Dodd (1991) 57 A Crim R 349. It now finds statutory expression in the acknowledgment in s 3A of the Crimes (Sentencing Procedure) Act that one of the purposes of punishment is "to ensure that an offender is adequately punished". The section also recognises that a further purpose of punishment is "to denounce the conduct of the offender".*

29. An example of how the principle of proportionality operates is also found in ***Veen v The Queen (No 2)***, ***supra*** where the High Court of Australia held that a sentence should not be increased merely to protect the community from further offending by the offender if the result of which would be a disproportionate sentence. In that case Mason CJ, Brennan, Dawson and Toohey JJ made the following useful observations at [473]:

> *It is one thing to say that the principle of proportionality precludes the imposition of a sentence extended beyond what is appropriate to the crime merely to protect society; it is another thing to say that the protection of society is not a material factor in fixing an appropriate sentence. The distinction in principle is clear between an extension merely by way of preventive detention, which is impermissible, and an exercise of the sentencing discretion having regard to the protection of society among other factors, which is permissible.*

30. Lamer CJ in the Canadian Supreme Court in ***The Queen v CAM***[11] found that retribution in sentencing represents:

> *...an objective, reasoned and measured determination of an appropriate punishment which properly reflects the moral culpability of the offender, having regard to the intentional risk-taking of the offender, the consequential harm caused by the offender, and the normative character of the offender's conduct.*

31. Howie J in the Court of Criminal Appeal of NSW in ***R v Zamagias***[12] made the following useful observations on the interaction of the various sentencing purposes and how the

---

[10] [2005] NSWCCA 152 at [15]
[11] [1996] 1 SCR 500 at [80]
[12] [2002] NSWCCA 17 at [32]

advancement of one purpose may achieve the goal of another:

> *It is perhaps trite to observe that, although the purpose of punishment is the protection of the community, that purpose can be achieved in an appropriate case by a sentence designed to assist in the rehabilitation of the offender at the expense of deterrence, retribution and denunciation...*

32. In light of the above, I find that all of the purposes of sentencing would need to be considered and balanced against each other to reach a sentence which conforms with the fundamental sentencing principle of proportionality. No one purpose has priority over the other. The amount of weight that would be given to each purpose would depend on the circumstances of the offending, mitigating and aggravating factors, and the personal circumstances of the offender.

WHETHER A RECORD OF CONVICTION IS TO BE ENTERED AGAINST MAWARIN?

33. I have considered Section 277(a) & (b) of the ***Crimes Act 2016***. Counsel for Mawarin sought a non-conviction be recorded. However, sufficient materials to justify it was not submitted to this court. Therefore, I find that this is not an appropriate instance in which a non-conviction is to be recorded.

IS A CUSTODIAL SENTENCE APPROPRIATE?

34. The offending did not involve any violence. Further, in similar types of offending non-custodial sentences have been made: See ***R v Beadan & Another***[13] and ***Rv Daguape & Others***[14]. Therefore, pursuant to Section 280 of the ***Crimes Act 2016***, I find that a term of imprisonment is not an appropriate sentence in this case.

WHAT IS THE APPROPRIATE SENTENCE TO BE HANDED DOWN TO MAWARIN?

35. Upon careful consideration of the sentencing principles, case authorities and the relevant factors in relation to the nature of the offending, I find that the appropriate sentence for Mawarin is an order for a fine, community service and probation.

36. Section 6(a) of the Act requires that a fine be imposed together with a term of imprisonment. I have considered Section 281 of the ***Crimes Act 2016***. The Pre-Sentence Report contains information with regard to Mawarin's employment.

37. The defendants in ***R v Beadan & Another***[15] were imposed a fine of $1000 where the defendants were in possession of 1.4 grams and 1.1 grams of cannabis. In ***R v Daguape & Others***[16] the first and second defendants were imposed a higher fine in the sum of

---

[13] n2
[14] n4
[15] n2
[16] n4

$1500 to reflect the court's condemnation of their conduct of encouraging and/or allowing a juvenile to smoke cannabis with them. In the current circumstance Mawarin smoked cannabis in a place where children were exposed to his offending. This court condemns such types of behavior, therefore, in the current circumstances a fine of $1500 is more appropriate.

38. Section 22 of the ***Criminal Justice Act 1999*** allows the court to make an order for community service against a person above the age of 13 who has been found guilty of an offence punishable by imprisonment.

39. In defendants in ***R v Beadan & Another, supra*** ordered to do community service for 3 months. In the current circumstance this would be the most appropriate duration for community service. I make community service orders against Mawarin accordingly.

40. Section 25 of the ***Criminal Justice Act 1999*** provides for the content of a community service order. I have considered Section 25 and make orders accordingly.

41. Section 7(1), 8(1) and 11(1) of the ***Criminal Justice Act 1999*** are relevant in relation to a probation order that would be made in the current circumstances. Section 7(1) of the ***Criminal Justice Act 1999*** provides that "where a person is **convicted** of an offence punishable by imprisonment the court may, instead of sentencing him or her to imprisonment, make a probation order releasing the person on probation for a period specified in the order, being a period of not less than 1 year nor more than 3 years".

42. The term convicted has been interpreted by the courts flexibly. In ***HA & SB v The Director of Public Prosecutions***[17] the Supreme Court of New South Wales made the followings observation at [9] of its judgment with regard to the interpretation of the term convict:

> *9 The words "convict" and "conviction" are not words of constant meaning with universal application. In Maxwell v The Queen (1996) 184 CLR 501 at 507, Dawson and McHugh JJ said:*
>
> *"The question of what amounts to a conviction admits of no single, comprehensive answer. Indeed, the answer to the question rather depends upon the context in which it is asked. On the one hand, a verdict of guilty by a jury or a plea of guilty upon arraignment has been said to amount to a conviction. On the other hand, it has been said that there can be no conviction until there is a judgment of the court, ordinarily in the form of a sentence, following upon the verdict or plea."*
>
> *and reference was made to Burgess v Boetefeur (1844) 7 Man & G 481 at 504, 135 ER 193 at 202, R v Tonks [1963] VR 121 at 127-8,*

[17] [2003] NSWSC 347

R v Jerome and McMahon [1964] Qd R 595 at 604 and Richards v The Queen (1993) AC 217 at 226-7.

43. Section 65 of the ***Interpretation Act 2011*** defines "conviction" as "a finding of guilt by a court, whether or not the conviction is recorded". In the current context, the term "convicted" must be interpreted to mean "a finding of guilt by a court, whether or not conviction is recorded". This interpretation was adopted in the Supreme Court of Nauru in ***Republic v BR***[18]. This court is bound by the Supreme Court's interpretation in that matter.

44. In ***R v Beadan & Another***[19] the defendants were made subject to a probation order which was to commence after the community service order expired. In this matter I also make a probation order against Mawarin for a duration of 1 year which will commence after the completion of the community service order.

45. There is no need for specific or personal deterrence because Mawarin is a first-time offender.

46. In light of my determinations above, Mawarin is to be released from remand custody with immediate effect.

ORDERS

47. I make the following orders:

1. That a conviction is recorded against Mawarin Detabene.

2. That Mawarin is to pay a fine of $1500 within 28 days from 6 December 2024. If the he fails to pay the fine within 28 days then he shall be committed to a term of imprisonment for 6 months.

3. That a community service order is made against Mawarin in the following terms:

    i. Mawarin is to carry out two hours of community service every Saturday on a weekly basis commencing from 14 December 2024 for a period of 3 month.
    ii. Mawarin is to report to the Chief Probation Officer on 12 December 2024 at 11am.
    iii. The Chief Probation Officer shall give necessary directions on the community service to be undertaken.

[18] Supreme Court Criminal Case No. 3 of 2024
[19] n2

4. That a probation order is made against Mawarin for a period of 1 year effective from the date of the expiration of the community service order. The conditions of the probation order are as follows:

    i. Mawarin shall report in person to the Chief Probation Officer under whose supervision he is placed at a time provided by the Chief Probation Officer after the expiry of the community service order, and shall further report as and when he is required to do so by the Chief Probation Officer;

    ii. Mawarin shall reside at his current place of residence and give to the Chief Probation Officer reasonable notice of his intention to move from his current place of residence;

    iii. Mawarin shall not reside at an address that is not approved by the Chief Probation Officer;

    iv. Mawarin shall not continue in an employment, or continue to engage in an occupation that is not approved by the Chief Probation Officer;

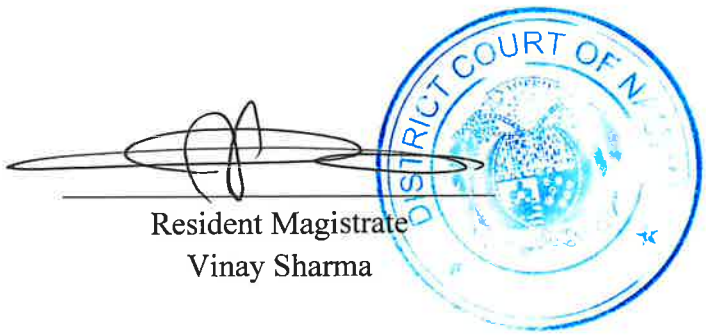
    v. Mawarin shall not associate with a specified person, or with persons of a specified class, with whom the Chief Probation Officer has, in writing, warned him not to associate; and

    vi. Mawarin shall keep the peace, be of good behaviour and commit no offence against the law.

5. That Mawarin is to be released from remand custody with immediate effect.

6. That the parties are at liberty to appeal this sentence within 21 days from 6 December 2024.

Dated this 6 day of December 2024.



Resident Magistrate
Vinay Sharma