



**IN THE DISTRICT COURT OF NAURU  
AT YAREN  
CRIMINAL JURISDICTION**

Criminal Case No. 5 of 2021

**BETWEEN:** **THE REPUBLIC OF NAURU**

**PROSECUTION**

**AND:** **UAM MAU**

**DEFENDANT**

**BEFORE:** Resident Magistrate Mr. Vinay Sharma

**DATE OF HEARING:** 6 August 2024

**DATE OF RULING:** 16 August 2024

**APPEARANCE:**

**PROSECUTION:** A Driu

**DEFENDANTS:** V Clodumar

# SENTENCE

## BACKGROUND

1. The defendant is to be sentenced for the offence of dangerous driving occasioning grievous bodily harm contrary to section 67B(1)(b) and (2) of the *Motor Traffic (Amendment) Act 2016* (“the Act”).
2. On 19 February 2021 the defendant was detained by the order of the District Court for a period of 7 days to allow the Nauru Police Force to complete its investigations.
3. On 26 February 2021 the defendant was charged for attempted murder contrary to section 55A of the Crimes Act 2016 (Count 1) and an alternative count for dangerous driving occasioning grievous bodily harm contrary to section 67B(1)(b) and (2) of the Act (Count 2). The case was transferred to the Supreme Court on the same date. The defendant was further remanded in custody.
4. On 26 March 2021 the defendant was indicted on an information that charged him with attempted murder contrary to section 55A of the Crimes Act 2016 (Count 1) and an alternative count for dangerous driving occasioning grievous bodily harm contrary to section 67B(1)(b) and (2) of the Act (Count 2).
5. On 9 April 2021 the defendant pleaded “not guilty” to attempted murder contrary to section 55A of the Crimes Act 2016 (Count 1), and “guilty” to the alternative count for dangerous driving occasioning grievous bodily harm contrary to section 67B(1)(b) and (2) of the Act (Count 2).
6. On 13 January 2022 the defendant was released on bail. The defendant spent approximately 11 months in remand custody.
7. Ms Puleiwai for the prosecution was having difficulties obtaining the complainant’s statement for the purposes of disclosure. As early as 20 September 2022 Ms Puleiwai had indicated to the Supreme Court that the DPP’s office would file *Nolle Prosequi* for count 1 if the defendant maintained his “guilty” plea for the alternative count. The defendant did not withdraw his “guilty” plea for the alternative count. On 1 November 2022 Mr Clodumar informed the Supreme Court that the defendant will maintain the guilty plea for the alternative count.
8. On 21 February 2024 the DPP’s office filed *Nolle Prosequi* for count 1 and amended information. The defendant once again entered a “guilty” plea for the charge for dangerous driving occasioning grievous bodily harm contrary to section 67B(1)(b) and (2) of the Act. The matter was remitted to the District Court for sentencing by consent.

9. There seems to have been an administrative delay in the filing of the *Nolle Prosequi*. This could have been avoided.
10. The defendant is now charged as follows:

*Statement of Offence*

**DANGEROUS DRIVING OCCASIONING GRIEVOUS BODILY HARM:**  
*contrary to section 67(1)(b) and (2) of the Motor Traffic (Amendment) Act 2016.*

*Particulars of Offence*

*UAM MAU on the 9<sup>th</sup> of February 2021, in Nauru, drove a motor vehicle registration number TT 1192 in a manner that was dangerous to another person or persons and caused an impact on the motor cycle that driven by RAJESHKUMAR RAGAGOPA and the impact occasioned grievous bodily harm to the said RAJESHKUMAR RAGAGOPA.*

11. On 27 March 2024 the Republic filed the Summary of Facts. The contents of the Summary of Facts were read out on the same date, and it was agreed to by the defendant with a minor amendment to it, which will be reflected in the circumstances of the offending.
12. On 8 May 2024 the Chief Probation Officer submitted the Pre-Sentence Report, which was subsequently amended by the Chief Probation Officer to cure a typographical error. The amended Pre-Sentence Report was filed on 16 July 2024.
13. On 12 July 2024 the Republic filed its Sentencing Submissions.
14. On 5 August 2024 the defendant's counsel filed the Defendant's Submission on Sentencing Mitigation.
15. On 6 August 2024 the parties were heard on their sentencing and mitigation submissions. During the hearing the defendant's counsel filed a reference letter on behalf of the defendant.
16. I have considered the sentencing and mitigation submissions and proceed with the sentencing.

**FACTS SURROUNDING THE CIRCUMSTANCES OF THE OFFENCE**

17. The following are the facts surrounding the offence as provided in the Summary of

Facts:

- i. *Uam MAU ("the [defendant]) was 19 years old at the time of the offence and resides in Anetan District in Nauru with his family.*
- ii. *That on the 9<sup>th</sup> day of February 2021, at around 1053hrs, the [defendant] drove a grey Toyota Harrier vehicle, registration number TT-1192.*
- iii. *The said vehicle is owned by a Chinese National by the name of Wu Bahui and was rented out to the [defendant].*
- iv. *The [defendant] left Anetan District and drove clockwise towards Meneng District.*
- v. *The [defendant] was driving the vehicle with three (3) other people inside the vehicle.*
- vi. *As per seating arrangements in the vehicle saw one person seated in the front passenger seat whilst the other two persons namely, Smart Hubert (PW1) and [Jadu Agadio] (PW2) on the back-passenger seat.*
- vii. *The [defendant was] still driving along the main road towards Meneng District when [he] stopped the vehicle and told PW1 to bend the number plate upwards to which PW1 complied as instructed, however, clueless as to what the [defendant's] intentions were.*
- viii. *The [defendant] then drove towards Top-side along the dirt road.*
- ix. *PW1 stated that while they were travelling on the dirt road, their vehicle suddenly accelerated with high speed and for about 3 seconds later, a sudden impact occurred which slowed down the vehicle and PW1 witnessing, on the left side of the vehicle, a motorcycle on the ground.*
- x. *Rajeshkumar Ragagopa (PW3) was riding the said motorcycle, registration number AB-806, at the time of its collision with the vehicle driven by the [defendant].*
- xi. *PW3 is a refugee of Sri Lankan origin who was residing in Nauru at the time.*
- xii. *PW3 was thrown off the motorcycle and sustained severe bodily injuries as a result.*
- xiii. *As a result of the collision, the vehicle had damaged its front left bumper and bonnet.*

- xiv. *PW3 sustained multiple abrasions to his face, shoulders and arm and had an open dislocated left ankle...*
- xv. *PW3 was transported to the RON Hospital via an ambulance from the scene of the collision and was admitted at the RON Hospital before he was medically evacuated to Australia for medical treatment...*
- xvi. *According to the examining Doctor at RON Hospital, he was unable to examine PW3's back due to the severe pain endured by PW3 at the time.*
- xvii. *As per the collision itself, PW1 stated that their vehicle had stopped and he saw that a motorcycle was on the ground on the left side of their vehicle and the engine was still running.*
- xviii. *PW1 further stated that when their vehicle stopped, the [defendant] got off the vehicle and lifted the motorcycle and drove off in it leaving him and the other 2 passengers back in the vehicle.*
- xix. *The [defendant] was later picked up from the top of the hill at Black Soil area with Jeshua Agege in control of the vehicle as driver and from there, the vehicle was driven down the hill and as they drove through the junction between Buada/Aiwo Districts and the road going to the Correctional Centre, was when they were stopped by the Police and the [defendant] exited the vehicle and ran off towards the pinnacles.*
- xx. *The [defendant] was later arrested by the Police and he was interviewed under caution on 22 February 2021.*

## **PERSONAL CIRCUMSTANCES OF THE DEFENDANT**

18. The following are the relevant personal circumstances of the defendant which is gathered from the document filed by the defendant in relation to the sentencing and the Pre-sentence Report:
- i. The defendant is 21 years old.
  - ii. The defendant has two siblings and is the second eldest child. He lives with his sister and mother in Anetan District.
  - iii. The defendant stopped going out with his friends after being released on bail.
  - iv. The defendant is unemployed and relies on his mother for financial support.
  - v. The defendant is a fisherman and goes out fishing with family members to support his family.

- vi. The defendant dropped out of school at primary level.
- vii. The defendant goes to church and also engages in sport activities.
- viii. The defendant is in a defacto relationship with Tula Scotty and they have a female infant child together who was born in December 2023. His defacto partner and child reside with him at Anetan District.
- ix. After being released on bail, the defendant stopped drinking alcohol and spends more time at home.
- x. The defendant does not have any prior criminal record.
- xi. The defendant's mother is sick and needs the defendant around for assistance.

### **AGGRAVATING FACTORS**

19. The following are the aggravating factors that apply to the defendant:

- i. The defendant fled the scene of the crime and did not offer any assistance to the victim.
- ii. The victim had extensive injuries and had to be evacuated to Australia for medical treatment.
- iii. The defendant was intoxicated during the time of the offending.
- iv. The defendant evaded police arrest.
- v. The defendant drove the vehicle erratically.
- vi. The defendant put his passengers (3 of them) at risk.

### **MITIGATING FACTORS**

20. The court finds the following mitigating factors in favor of the defendant:

- i. As per the Pre-Sentencing Report for the defendant, he has demonstrated contrition which indicates that there is a high chance that he will rehabilitate.
- ii. The defendant is remorseful.
- iii. The defendant doesn't have any previous convictions.
- iv. The defendant is 21 years old and at the time of the offending was 19 years old and lacked maturity.

- v. The defendant has low educational attainment.
- vi. The delay in having the charges amended and the matter listed for sentencing.
- vii. After being released on bail, the defendant has not committed a crime, and he has settled down with his defacto partner and has started his own family.

## **OBJECTIVE SERIOUSNESS OF THE OFFENDING**

- 12. The maximum penalty under Section 67B(1)(b) and (2) of the Act is a term of imprisonment for 7 years.
- 13. As per the Pre-Sentence Report the defendant was intoxicated at the time of the offending. This increases the moral culpability of the defendant, and when taken together with the aggravating factors it increases the moral culpability of the defendant further. Therefore, I find the moral culpability of the defendant was high. This when considered together with the personal circumstances and mitigating circumstances of the defendant gives the objective seriousness of the offence, which I find to be in the mid to high range of the level of seriousness.

## **RANGE OF SENTENCES**

- 14. Section 277 of the *Crimes Act 2016* provides for the types of sentences that this court can impose on a person found guilty of an offence:

### ***277 Kinds of sentences***

*Where a court finds a person guilty of an offence, it may, subject to any particular provision relating to the offence and subject to this Act, do any of the following:*

- (a) record a conviction and order that the offender serve a term of imprisonment;*
- (b) with or without recording a conviction, order the offender to pay a fine;*
- (c) record a conviction and order the discharge of the offender;*
- (d) without recording a conviction, order the dismissal of the charge for the offence; or*
- (e) impose any other sentence or make any order that is authorised by this or any other written law of Nauru.*

- 15. In *Republic of Nauru v Dekarube'* this court provided the sentencing range for an

offence under Section 67B(1)(b) and (2) of the Act which I have considered. In New South Wales Australia, the offence of dangerous driving causing grievous bodily harm also carries a maximum penalty of 7 years imprisonment. The New South Wales guideline judgement in *R v Whyte*<sup>2</sup> provides that for the offence of dangerous driving causing grievous bodily harm a custodial sentence is appropriate when the moral culpability of the offender is mid to high range.

## SENTENCING APPROACH AND PRINCIPLES

16. 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.*

17. 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*.
18. 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.
19. Section 281 of the *Crimes Act 2016* provides the considerations that the court must take into consideration as far possible when deciding to impose a fine on a person found guilty of an offence.
20. Hunt CJ at CL in the Court of Criminal Appeal of NSW in *R v MacDonell*<sup>3</sup> 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*

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<sup>1</sup> [2020] NRDC 7

<sup>2</sup> (2002) 55 NSWLR 252

<sup>3</sup> (unrep, 8/12/95, NSWCCA) at [1]



*exercising a discretion as to what sentence should be imposed by applying those principles to the facts found.*

21. Section 278 of the **Crimes Act 2016** adopts the common law principles of sentencing as was found in *Veen v The Queen (No 2)*<sup>4</sup> 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.*<sup>5</sup>

22. Further, the High Court of Australia in *Muldock v The Queen*<sup>6</sup> 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.]*

23. Having referred to the cases above on the application of the purposes for sentencing, I 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*<sup>7</sup>:

*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*

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<sup>4</sup> (1988) 164 CLR 465

<sup>5</sup> *Veen v The Queen (No 2)* (1988) 164 CLR 465

<sup>6</sup> (2011) 244 CLR 120 at [20]

<sup>7</sup> [2005] NSWCCA 152 at [15]

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".

24. 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.*

25. Lamer CJ in the Canadian Supreme Court in *The Queen v CAM*<sup>8</sup> 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.*

26. Howie J in the Court of Criminal Appeal of NSW in *R v Zamagias*<sup>9</sup> made the following useful observations on the interaction of the various sentencing purposes and how the 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...*

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<sup>8</sup> [1996] 1 SCR 500 at [80]

<sup>9</sup> [2002] NSWCCA 17 at [32]

27. 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.

### **CONVICTED AS CHARGED?**

28. 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.*

29. The defendant pleaded guilty to the offence of dangerous driving causing grievous bodily harm. Therefore, he is found guilty as charged.
30. In the current circumstances, there are no facts that would justify discharging the defendants without proceeding to conviction. Therefore, the defendant is convicted as charged.

### **CONSIDERATION**

31. Having considered the various sentencing principles, I will now consider the applicable factors and circumstances of this case, and apply them to the sentencing principles. In doing so I have taken account of Section 279 of the *Crimes Act 2016*.
32. The defendant's offending caused serious harm to the victim, and he also put 3 of his passengers at risk. In light of the objective seriousness of the offending and the high moral culpability of the defendant, I find that a term of imprisonment is the appropriate sentence in this case. A custodial sentence is necessary to deter the members of the public. Further, it will also ensure that those sentenced to a custodial sentence would learn from their punishment.
33. The defendant does not have any prior criminal record. There is no need for specific or personal deterrence in relation to him.
34. The defendant pleaded guilty at the earliest possible time. As a result of his early guilty plea he is entitled to a 1/3 reduction from his term of imprisonment.

35. I have considered the defendant's plea that if a custodial sentence is imposed on him, then it be suspended. The defendant is a young offender. He was 19 years old at the time of the offending and lacked maturity. He has low educational attainment. The defendant has no prior criminal record. The defendant pleaded guilty to the charge on 9 April 2021 and the prosecution had indicated that count 1 would be withdrawn in 2022, there was a significant delay in the filing of the *Nolle Prosequi*. During this period of time the defendant has been of good behavior and has settled down with his defacto partner with whom he has an infant child. A term of imprisonment may affect his family life and future prospects. Suspended sentences are custodial sentences founded upon the sentencing principle of deterrence and rehabilitation: see *Dinsdale v The Queen* (2000) 202 CLR 321. I find that in the current circumstances a suspended sentence would be appropriate.

### SENTENCE

36. The starting point for a term of imprisonment for the offence of dangerous driving causing grievous bodily harm is 3 years. Upon consideration of the aggravating factors, mitigating factors and the personal circumstances of the defendant, the term of imprisonment is reduced to 2 years and 6 months. The defendant entered an early guilty plea and is entitled to a 10 months reduction. This leaves a term of imprisonment for 1 year 6 months.
37. The defendant spent 11 months in remand custody. This would be deducted from the 1 year 6 months as time spent. This leaves 5 months of imprisonment to be served.
38. In light of the two significant considerations of deterrence and rehabilitation, the defendant's sentence shall be suspended for a period of 1 year 6 months. During the suspension period the defendant is to be on good behavior and shall maintain the peace. If the defendant would be sentenced for any other crime during the suspension period, then the remaining term of imprisonment for 5 months shall be reactivated against the defendant and it shall be served consecutively to any sentence imposed for the subsequent offending.

### RECORD OF CONVICTION

39. I have considered Section 277(a) & (b) of the *Crimes Act 2016*. The defendant has not raised any grounds or facts upon which this court is able to exercise its discretion not to enter a record of conviction against the defendant. Therefore, I enter a record of conviction against the defendant accordingly.

### ORDERS

40. The following are the orders of this court:

1. That a conviction is recorded against the defendant, namely, Uam Mau.
2. That the defendant is imposed a term of imprisonment for 5 months which shall be suspended for a period of 1 year and 6 months.
3. That the defendant is to be of good behavior and shall maintain the peace for the duration of the suspended sentence. If the defendant commits another offence during the period of the suspended sentence, then the suspended sentence is to be reactivated and served consecutively to any sentence imposed as a result of the subsequent offending.
4. That the parties are at liberty to appeal the defendant's sentence within 21 days from 16 August 2024.

Dated this 16 day of August 2024.

  
Resident Magistrate  
Vinay Sharma