



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

Criminal Case No. 34 of 2024

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

**PROSECUTION**

**AND:** **WALTER DETENAMO**

**DEFENDANT**

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

**DATE OF HEARING:** 21 March 2025

**DATE OF SENTENCING:** 11 April 2025

**APPEARANCE:**

**PROSECUTION:** M Suifa'asia

**DEFENDANTS:** S Solomon

# SENTENCE

## INTRODUCTION

1. Walter Detenamo pleaded guilty to:
  - i. One count of recklessly causing harm contrary to section 75(a)(b)(c) of the Crimes Act 2016; and
  - ii. Another count of common assault contrary to section 78(1)(a)(ii) of the Crimes Act 2016.
2. I am to sentence Walter for the offences for which he has pleaded guilty. The facts surrounding the offending and Walter's personal circumstances are undisputed.
3. There are no disputes about the issues I will determine under section 279 of the *Crimes Act 2016*. Further, there are no disputes about the sentencing principles to be applied. Therefore, the issues before me for determination are:
  - i. Should Walter 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 Walter?
  - vi. What is the appropriate sentence to be handed down to Walter?
4. The following are my reasons for the sentence.

## FACTS SURROUNDING THE CIRCUMSTANCES OF THE OFFENCE

5. Walter is the victim's husband. They have three children. At the time of the offending, Walter and the victim lived together in Ijuw District. However, they have separated since then.
6. On 28 May 2024, at around 7 a.m., Walter and the victim had an argument about their youngest son. The youngest son did not want to go to school, and the victim insisted that he attend school. She was talking to the youngest son. Walter intervened and told the victim that if their son did not want to go to school, then so be it. Walter and the victim started to argue.
7. Walter picked up a motorbike helmet and hit the victim on the right side of her face. She fell down as a result of the impact. Walter then approached the victim and punched her on the right side of her face, and then left their home.
8. The victim reported the matter and was taken to RON Hospital for medical examination. The medical report recorded a finding of "*3cm x 3cm haematoma on the right zygoma (face) area. Mild swelling and tenderness*".

## **VICTIM IMPACT STATEMENT**

9. The victim is now separated from Walter. At the time of the offending, the victim felt bullied, scared and angry. She experienced domestic violence throughout her marriage to Walter. The victim was traumatised by the violence perpetrated on her by Walter. She relived the abuse she faced throughout her marriage as a result of it. She does not want to reconcile with Walter. She wishes to move on with her life.

## **PERSONAL CIRCUMSTANCES OF THE DEFENDANT**

10. Walter's personal circumstances are:
- i. He is 52 years old, and he has 3 children with the victim who are 19, 17, and 16 years old.
  - ii. He is employed at Nauru Utilities Corporation and earns \$650 per fortnight.
  - iii. He provides for his family. Currently, he is paying \$150 per fortnight to support his children.
  - iv. He does not have any previous criminal history.
  - v. He has not smoked cigarettes or drunk kava or alcohol for the past 7 years.
  - vi. He is well-liked in his community.

## **AGGRAVATING FACTORS**

11. I find the following aggravating factors that apply to Walter in relation to counts 1 & 2:
- i. He used a weapon.
  - ii. He engaged in an unprovoked attack on the victim.
  - iii. The victim is a vulnerable victim.
  - iv. The attack was carried out at their home (in a domestic setting).

## **MITIGATING FACTORS**

12. I find that the following mitigating factors apply in favor of Walter for counts 1 and 2:
- i. There is a high chance that he will rehabilitate.
  - ii. He is remorseful.

- iii. Minor physical injuries were inflicted on the victim.

**SHOULD WALTER BE CONVICTED AS CHARGED?**

- 13. 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.*

- 14. No material before me would justify a finding that Walter should not be convicted as charged. Therefore, I convict Walter as charged.

**WHAT IS THE OBJECTIVE SERIOUSNESS OF THE OFFENDING?**

***Count 1***

- 15. The defendant used a weapon to strike the right side of the victim's face. The violence was unprovoked and intentional. The victim is his wife. Women are considered to be vulnerable victims. Walter's moral culpability is high. The injuries caused on the face were minor. In light of Walter's personal circumstances, aggravating and mitigating circumstances, and moral culpability, I find that the objective seriousness of the offending in count 1 is at the mid-range of the severity scale.

***Count 2***

- 16. The defendant punched the right side of the victim's face. The violence was unprovoked and intentional. The victim is his wife. Women are considered to be vulnerable victims. Walter's moral culpability is high. The injuries caused on the face were minor. In light of Walter's personal circumstances, aggravating and mitigating circumstances, and moral culpability, I find that the objective seriousness of the offending in count 2 is also at the mid-range of the severity scale.

**WHAT IS THE SENTENCING RANGE?**

- 17. The maximum penalty for offences under section 75 of the *Crime Act 2016* is 5 years imprisonment.
- 18. The maximum penalty for offences under Section 78 of the *Crimes Act 2016* is 2 years imprisonment.
- 19. There are insufficient case authorities to establish a sentencing range for the two offences in order to use them as a yardstick. Further, this case involves domestic violence, which needs special considerations.

## SENTENCING APPROACH AND PRINCIPLES

20. 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.*

21. Section 279 of the *Crimes Act 2016* outlines the considerations that the court must consider when sentencing a person found guilty of an offence. The considerations under this section stems from Section 278 of the *Crimes Act 2016*.
22. Section 280 of the *Crimes Act 2016* provides the sentencing considerations that must be considered when deciding whether a term of imprisonment is appropriate.
23. Section 281 of the *Crimes Act 2016* provides the considerations that the court must consider as far as possible when deciding to impose a fine on a person found guilty of an offence.
24. Hunt CJ at CL in the Court of Criminal Appeal of NSW in *R v MacDonell*<sup>1</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 exercising a discretion as to what sentence should be imposed by applying those principles to the facts found.*

25. 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>2</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:

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

<sup>2</sup> (1988) 164 CLR 465

*... 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>3</sup>

26. Further, the High Court of Australia in *Muldrock v The Queen*<sup>4</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.]*

27. 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>5</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 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”.*

28. 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

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<sup>3</sup> *Veen v The Queen (No 2)* (1988) 164 CLR 465

<sup>4</sup> (2011) 244 CLR 120 at [20]

<sup>5</sup> [2005] NSWCCA 152 at [15]

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.*

29. Lamer CJ in the Canadian Supreme Court in *The Queen v CAM*<sup>6</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.*

30. Howie J in the Court of Criminal Appeal of NSW in *R v Zamagias*<sup>7</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...*

31. 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 offender's personal circumstances.

#### **WHETHER A RECORD OF CONVICTION IS TO BE ENTERED AGAINST WALTER?**

32. I have considered Sections 277 (a) and (b) of the *Crimes Act 2016*. There are no materials before me that would justify that a conviction not be recorded. Therefore,

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<sup>6</sup> [1996] 1 SCR 500 at [80]

<sup>7</sup> [2002] NSWCCA 17 at [32]

convictions would be recorded against Walter for counts 1 and 2.

**IS A CUSTODIAL SENTENCE APPROPRIATE?**

33. The offence involved substantial use of violence. A weapon was also used. The victim is a vulnerable member of society. It is a well-known fact that there is a high level of domestic violence perpetrated against women because of their vulnerable status. In light of the circumstances of the offending, I find that a custodial sentence is appropriate. The courts will not tolerate any form of violence against women, especially in their homes. Those who resort to domestic violence against women must expect harsh sentences from the courts because domestic violence against women has no place in Nauru.

**WHAT IS THE APPROPRIATE SENTENCE TO BE HANDED DOWN TO WALTER?**

34. I have considered the various sentencing principles, applicable factors and circumstances of this case, including Section 279 of the *Crimes Act 2016*.
35. Walter does not have any prior criminal record. There is no need for specific or personal deterrence in relation to him. Further, he 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.

***Count 1***

36. The starting point for a term of imprisonment for Count 1 is 2 years. I have considered the aggravating factors, mitigating factors, and Walter's personal circumstances. I strongly denounce domestic violence against women. Therefore, a term of 6 months is added to the term of 2 years imprisonment.
37. Further, I reduce Walter's term of imprisonment to 1 year 6 months in light of his early guilty plea.

***Count 2***

38. The starting point for a term of imprisonment for Count 2 is 1 year. I have considered the aggravating factors, mitigating factors, and Walter's personal circumstances. Once again, I strongly denounce domestic violence against women. Therefore, a term of 3 months is added to the term of 1 year imprisonment.
39. Further, I reduce Walter's term of imprisonment to 8 months in light of his early guilty plea.

***Should the sentence be suspended?***

40. Suspended sentences are custodial sentences that take into consideration the sentencing principles of deterrence together with the need to rehabilitate the defendant: see *Dinsdale v The Queen* [\[2000\] HCA 54; \(2000\) 202 CLR 321](#).



41. I have considered the Pre-Sentence Report (“Report”) and the recommendation that a non-custodial sentence be made. The Report highlighted Walter’s high chance of rehabilitation and his remorsefulness.
42. Walter is a first-time offender and is 52 years old. He is also supporting his family. An immediate custodial sentence would affect his family. Therefore, in light of the family’s circumstances and the high chances of rehabilitation, I find that a full suspended sentence would be appropriate in the current circumstances. The sentence is to be suspended for a period of three years.

## **ORDERS**

43. I make the following orders:


### ***Count 1***

1. That a conviction is recorded against Walter Detenamo for count 1.
2. That Walter is to be imprisoned for a term of 1 year 6 months for count 1.

### ***Count 2***

3. That a conviction is recorded against Walter Detenamo for count 2.
4. That Walter is to be imprisoned for a term of 8 months for count 2.
5. That the terms of imprisonment in counts 1 and 2 are to be served concurrently.
6. That the terms of imprisonment are suspended for a period of 3 years.
7. That Walter is to be of good behavior. He shall maintain the peace for the duration of the suspended sentence. If he commits another offence during the period of the suspended sentence, then in that case, the suspended sentence will be reactivated and served consecutively to any sentence imposed due to the subsequent offence.
8. That the parties are at liberty to appeal this sentence within 21 days from 11 April 2025.

Dated this 11 day of April 2025.

  
Resident Magistrate  
Vinay Sharma