



IN THE SUPREME COURT OF NAURU  
AT YAREN  
[CRIMINAL JURISDICTION]

Criminal case No. 10 of 2022

BETWEEN: THE REPUBLIC

PROSECUTION

AND: ATSIBWEBWADA ATSIME (A.K.A) PONTOON

ACCUSED

Before: Keteca J

Date of Guilty Plea: 19<sup>th</sup> October 2023

Date of Sentencing Submissions: 30th October 2023

Date of Sentence: 22<sup>nd</sup> November 2023

Case may be cited as: *Republic v Atsime*

CATCHWORDS: Intentionally Causing Serious Harm, Section 71(a)(b)(c) (ii), Crimes Act 2016.

APPEARANCES:

Counsel for the Prosecution: Ms. F. Puleiwai

Counsel for the Accused: Mr. R Tagivakatini

## SENTENCING

### Introduction

1. **Atsibwebwada Atisme (aka Pontoon)**, you are charged with one count of **Intentionally Causing Serious Harm** contrary to Section 71(a)(b)(c) (ii) of the Crimes Act 2016.
2. On 19th October 23, after the charge was read to you in English and interpreted in Nauruan, you pleaded guilty to the charge. You also agreed with the summary of facts.
3. The court confirmed with you and your counsel that you understood what you were pleading guilty to. I found you guilty as charged.
4. The prosecution filed Sentencing submissions. Your counsel filed Mitigation and Sentencing submissions.

### The Charge

#### Statement of Offence

INTENTIONALLY CAUSING SERIOUS HARM: Contrary to Section 71(a)(b)(c)(ii) of the Crimes Act 2016.

#### Particulars of Offence

ATSIBWEBWADA ATISME (a.k.a) PONTOON on the 25<sup>th</sup> September, 2022 at Anetan District in Nauru intentionally engaged in conduct by stabbing DN on her left cheek with an object and the conduct caused serious harm to DN and ATSIBWEBWADA ATISME (a.k.a) PONTOON intended to cause serious harm to DN by the said conduct.

### The Law

5. Section 71 of the Crimes Act 2016 provides:  
A person commits an offence, if:

- (a) the person intentionally engages in conduct;
- (b) the conduct causes serious harm to another person; and
- (c) the person intends to cause serious harm to that or any other person by the conduct.

#### Penalty

- i. If aggravating circumstances apply - 20 years imprisonment; or
  - ii. In any other case - 15 years imprisonment.
6. The maximum penalty for the offence that the accused has pleaded guilty to is 15 years imprisonment.

### **Kinds of sentences under the Crimes Act 216**

7. Section 277 provides:

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 authorized by this or any other written law of Nauru.

### **Purposes of sentencing**

8. The purposes for sentencing provided under section 278 are:
- (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 recognize the harm done to the victim and the community.

9. The general sentencing considerations are set out in Section 279.
10. The sentencing considerations for imprisonment are set out in Section 280.
11. Section 281 provide for the sentencing considerations for fines.
12. The court has the power to reduce penalties under Section 282.
13. For Part 7 offences, Section 282A provides that the pre- trial detention period is not to be considered in determining the final term of imprisonment.

### **The Facts**

14. You and the victim are related. Your parents are first cousins. You are 44 years old. At the time of the offence, the victim was 13 years old. You sought the victim's assistance to download videos on your phone. She assisted you. As she was about to leave, you stopped her. You held her hands and pulled her close to you. She was scared. You then released her. You followed her to her home, asking her not to tell anyone of what you did. You offered her money. You kept asking her not to tell anyone. You then went to your home. You brought a knife. You again begged her not to tell anyone. You then punched her on the jaw with the knife in your fist.
15. The medical report shows the following:
  - a. D(12)- Specific medical findings- Abrasion at left lower jaw;
  - b. Swelling around abrasion- soft tissue injury;
  - c. D(14)- the injury was caused by a punch to her left lower jaw.
16. The photographs of the injury clearly show a cut on her left lower jaw. Fresh bloodstains can also be seen on the photographs.

### **Submissions on Sentencing**

17. Counsel for the prosecution submits the following:
  - a. The accused is a first offender;
  - b. The *R v Kepae*<sup>1</sup> is distinguished as the circumstances in that case are different. (The court notes that *R v Kepae*<sup>2</sup> involved two grown men fighting whilst intoxicated. This case involves the punching with a knife of a 13-year-old girl by a sober 44-year-old relative);

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<sup>1</sup> [2022] NRSC 4: Criminal Case 19 of 2020 (21 Jan 22)

<sup>2</sup> n1

- c. The sentence in *R v Kepae*<sup>3</sup> is too lenient and it does not reflect the intention of Parliament in having maximum penalties for Section 71 offences at 15 years imprisonment;
- d. The sentence should not be suspended.
- e. Reference was made to the following cases:
  - (a) *DPP(Cth) v El Karhani*<sup>4</sup> - “16A(1) imposes on the court the duty which is its primary obligation to ensure that the sentence or order “ is of a severity appropriate in all the circumstances of the offence.”
  - (b) *Bahar v The Queen*<sup>5</sup> - “The statutory minimum and statutory maximum penalties are the floor/ceiling respectively within which the sentencing judge has a sentencing discretion to which the general principles are to be applied.”
  - (c) *R v Beer*<sup>6</sup> - “In the absence of positive guidance in the legislation, the Court should act according to principles which they have traditionally followed in imposing sentence. Sentencing is a practical exercise. Courts have traditionally fashioned sentences to meet circumstances of a particular offence, having regard to the needs of punishment, rehabilitation, deterrence, community vindication and community protection.” **The Court notes that the Nauru Crimes Act 2016 provides clear, positive guidelines on sentencing.)**

18. Counsel for the Accused submits:

- a. The accused has pleaded guilty, though one year later;
- b. His last conviction was more than 10 years ago but no records are available;
- c. He is remorseful and accepts the seriousness of the offending. He understands that these offences attract custodial sentences. He would like to apologize to the victim and her family and atone for his mistakes;
- d. The accused is currently employed as a security officer and is single;
- e. The sentence in *R v Kepae*<sup>7</sup> would be appropriate here including the suspension of part of the sentence; and
- f. This offence warrants the recording of a conviction.

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<sup>3</sup> n1 & n2

<sup>4</sup> (1990) 51 A Crim R 123 at 130

<sup>5</sup> [2011] WASCA 249

<sup>6</sup> [2000] QCA 193

<sup>7</sup> n1, n2 & n3

### **Victim Impact Statement (VIS)**

19. The VIS states:

- a. At the time of the incident, the victim did not know that she had been stabbed. After she found out that her injury was caused by a knife, she felt scared;
- b. She tries to “block out” the incident from her memory;
- c. She cannot sleep in their lounge now. She is insecure. She now sleeps in her mother’s or aunt’s room. She now has a heightened sense of awareness when trying to sleep.

### **Entering of Conviction**

20. Considering the provisions of the Crimes Act above and the submissions from counsels, I convict you accordingly.

### **What is the appropriate sentence here?**

21. Noting the seriousness of the offending, the court considers Sections 278, 279 of the Crimes Act 2016. The court also considers Section 280 which provides:

A sentence of imprisonment may be imposed on a person only if:

(a) In the opinion of the court:

- i. the person has shown a tendency to violence towards other people;
- ii. the person is likely to commit a serious offence if allowed to go at large;
- iii. the person has previously been convicted of an offence punishable by imprisonment;
- iv. any other sentence would be inappropriate having regard to the gravity or the circumstances of the offence; or
- v. the protection of the community requires it; or

(b) a sentence of imprisonment is necessary to give proper effect to Sections 278 and 279.

22. The court notes that there are no records of any previous convictions. Neither are there any records or reports of your tendency to proffer violence to other people.

23. The court considers Section 278 and the following matters under Section 279(2) of the Crimes Act 2016;

(a) The nature and circumstances of the offence- you're related to the victim. You had some unrevealed intention in holding her hands, pulling her close to you and asking her not to go. You then sought her forgiveness and pestered her not to tell anyone of what happened. You then went to your home. You got a knife. You punched the victim on her jaw with your fist that was holding the knife. There was a breach of trust here.

(d) any injury resulting from the offence- the victim suffered injuries as mentioned in paras[15], [16] above;

(f)&(g) the effect of the offence on the victim and the Victim Impact Statement- this is mentioned in para[20] above;

(l) the need to ensure the person is adequately punished; and

(n) the prospects of rehabilitation of the offender.

25. The court refers to *Baumer v The Queen*<sup>8</sup> where the court, in a joint judgement said:

"[T]he sole criterion relevant to a determination of the upper limit of an appropriate sentence is that the punishment fit the crime. **Apart from the mitigating factors, it is the circumstances of the offence alone that must be determinant of an appropriate sentence.**"

26. Considering all the above, the court concludes that a sentence of imprisonment should be imposed here.

### **How long should you be imprisoned for?**

27. Your counsel submits that I should follow *R v Kepae*<sup>9</sup>. That case involved serious harm suffered in a fist fight between two inebriated adults. They both suffered varying degrees of injuries. They had fist fights before. The victim was hospitalized for 5 days. His jaws needed to be wired and he was on a liquid diet for 6 weeks. The court sentenced the accused to 30 months imprisonment. Fifteen months was suspended.

28. This case is different. As I noted in para [14] above-

29. "You and the victim are related. Your parents are first cousins. You are 44 years old. At the time of the offence, the victim was 13 years old. You sought the victim's assistance to download videos. She assisted you. As she was about to leave, you stopped her. You held her hands and pulled her close to you. She was scared. You then released her. You

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<sup>8</sup> (1988) 166 CLR 51

<sup>9</sup> n1, n2, n3 & n7

followed her to her home, asking her not to tell anyone of what you did. You offered her money. You kept asking her not to tell anyone. You then went to your home. You brought a knife. You again begged her not to tell anyone. You then punched her on the jaw with the knife in your fist.”

30. There was a breach of trust here.

The victim is psychologically scarred and scared to sleep in their living room now.

31. Taking all the above into account, and further noting what the court said in *Baumer v The Queen*<sup>10</sup> – “it is the circumstances of the offence alone that must be determinant of an appropriate sentence”, I sentence you to 60 months imprisonment.

**Should any portion of this sentence be suspended?**

32. In *Jeremiah v Republic*<sup>11</sup> and *R v Kepae*<sup>12</sup>, the cases confirm that this Court has powers to suspend a sentence.

33. You are not a habitual offender. You have shown remorse. If given the opportunity, you would like to apologise to the victim and her family.

34. Out of your sentence of 60 months, 50% of this, is suspended for three years. In the next three years, should you be convicted of any other offence, your suspended term of 30 months will be activated. You will then have to serve that 30 months in prison.

35. As you had spent time in remand, I order that six months be deducted from your imprisonment term of 30 months.

36. You will serve 24 months in prison.

DATED this 22<sup>nd</sup> day of November 2023.

  
**Kiniviliame T. Keteca**  
**Judge**



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<sup>10</sup> n8

<sup>11</sup> [2017] NRSC 25: Criminal Appeal 101 of 2016 (25 April 2017)

<sup>12</sup> n1, n2, n3, n7 & n9