

REPUBLIC OF NAURU

v

SOLOMON TOM

Defendant

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JUDGE: Eames, C.J.  
DATE OF HEARING: 18 June 2012  
DATE OF SENTENCE 20 June 2012  
CASE MAY BE CITED AS: DPP v Solomon Tom  
MEDIUM NEUTRAL CITATION: [2012] NRSC 7

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CATCHWORDS:

Sentence - Robbery - S.411 Criminal Code 1899 - Aggravating element, being armed with a knife - Plea of guilty - Prior convictions - Offender subject to two good behaviour bonds at time of offence - Robbery of Chinese shop-keeper - Prevalence of offence.

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APPEARANCES:

For the Prosecution

Mr Wilisoni Kurisaqila DPP

For the Defendant

Mr Knox Tolenoa (Pleader)

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CHIEF JUSTICE:

- 1 Solomon Tom, you have pleaded guilty to one count of Robbery contrary to s. 411 of the Criminal Code of Queensland 1899 (1<sup>st</sup> Schedule) Adopted. That offence carries a maximum penalty of fourteen years' imprisonment, but that is extended to imprisonment for life where certain aggravating features accompany the offence. In your case you have admitted that when the robbery occurred you were armed with a knife, that being a dangerous or offensive weapon. The maximum sentence you face therefore is life imprisonment.
- 2 The offence occurred at about 8pm on 22 April 2012. Ms Li Ying was working in her mini store at Location Block Number 29, when you entered the store while covering your face with your T shirt. You were armed with a knife and you rushed towards the cash drawer, threatening the shop keeper with your knife, which you pointed at her, demanding she tell you where the money was.
- 3 CCTV footage captured the entire incident and at one point when you were behind the counter in close proximity to the woman you made a slashing motion with the knife, towards her hand, when she tried to stop you opening the cash drawer. You put your hand in the drawer and removed cash and coins to the value of about \$150, and a mobile phone.
- 4 The storekeeper said in her statement that she was terrified and feared for her life. Examination of the video footage shows why she would have felt that way. It was a frightening and dangerous robbery on a defenceless woman.
- 5 You obviously became concerned that your tattoos might give you away. On 28 April 2012 you contacted a tattooist and made an appointment for the following day. On that day, you and a Mr Degea met the tattooist. You later told police that you had given the stolen phone to Degea. You requested the tattooist to cover up one tattoo, on your forearm, saying that your sister did not like it. The tattooist said that he could not obliterate it but could disguise it, by adding to it. This he did.

6 Your efforts to disguise yourself were unsuccessful, however, as there were a number of tattoos that could identify you from the video. The shopkeeper had also noticed tattoos on your body, and close inspection of the footage by police led one police officer on 6 May 2012 identifying them as being similar to those you had. On 6th May police apprehended you and in an interview conducted that day you admitted the robbery but said that you were very drunk at the time. You said you did not know where you got the knife from.

7 The video footage shows that you were not so drunk as to be stumbling about. You told police you had been drinking with friends and after the robbery returned to the drinking group with liquor purchased with the stolen cash.

8 At the time of this offence you were subject to two separate bonds to be of good behaviour. On 7 June 2011 you were convicted of stealing and placed on a good behaviour bond for 12 months. On 17 January 2012 you were convicted of common assault and placed on another bond, this time for 6 months. Your present offence is seriously aggravated by the fact that not only did you have relevant prior convictions but you breached two separate good behaviour bonds by committing it.

9 In his submissions in mitigation of sentence your pleader, Mr Tolenoa, placed appropriate weight on the fact that you had admitted the offence when questioned by police, had pleaded guilty, and by your plea also admitted the aggravating feature, the fact that you were armed with a knife. You are entitled to a reduction in sentence for those reasons and you will receive it, but it must be said that had the incident not been video-taped you may well have avoided detection, and you had done your best to achieve that result.

10 The attempt to disguise your tattoos may well have amounted to an offence, on the part of everyone knowingly involved in it or encouraging it, of attempting to pervert the course of justice. You are not however, charged with such an offence and I will not regard it as an aggravating feature of the robbery offence. It is relevant, however, to the question of remorse.

- 11 You have shown no remorse for the trauma you caused your victim. The attempt to disguise your tattoos demonstrates that 6 days after the robbery you were concerned only with escaping apprehension. Whilst your plea of guilty provides some demonstration of remorse, the full value of that in mitigation of penalty is reduced by virtue of the fact that you really had no prospect of being found not guilty once your attempts failed to cover up your involvement in the crime.
- 12 I received a pre-sentence report from a probation and parole officer. You are aged 29 years. You are married with 6 children, the eldest of whom is 12 years of age, the youngest only months old. Neither you, nor your wife, are employed. You support your family by fishing and selling your catch. Your wife is from a remote island, so she does not have family here. She will be in a very difficult situation upon your imprisonment. She resides in a house with up to 20 families, but they do not share food. She will struggle without close kin around her, and your children will suffer too.
- 13 You have limited schooling. You are one of 7 siblings, all of whom had a difficult upbringing with a mother, now deceased, who was described by your pleader as an alcoholic. Mr Tolenoa submitted that alcohol played a big part in your offence. I accept that you were affected by liquor, but that does not help you much. The dangers are even greater if it is a drunken man who was wielding a large knife in close proximity to a terrified victim.
- 14 However, as Toloenoa submitted, the victim, although very frightened did not suffer physical injury.
- 15 As he did in the case of Deluka Agege<sup>1</sup>, the Director of Public Prosecutions submitted that this type of crime is very prevalent and the Court should impose a sentence that acts as a deterrent to potential offenders. He cited a number of cases in support of his submission that the range for sentencing for robbery in Nauru when a 14 year maximum sentence is available, is between 16 months and four years'

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<sup>1</sup> [2012] NRSC 8

imprisonment. He submitted that where the maximum sentence is life imprisonment the range must be substantially higher.

16 The offence of robbery against small shop owners and shop workers has been extremely prevalent in Nauru. The victims have invariably been Chinese people, usually women, who were alone and were vulnerable soft targets. Offenders have invariably been imprisoned for such offences in recent years, including first offenders, but it is apparent that those sentences to date have not acted as a deterrent to offenders such as you.

17 It seems that in all of those past cases the prosecution advised the court that the maximum sentence that applied was 14 years imprisonment. The Prosecution had not sought to rely on such aggravating elements of the offence that applied to s.411, so as to increase the maximum sentence from 14 years to life imprisonment. In this case the prosecution has adopted that course.

18 The message must get across the community that offences such as this are not minor matters. They are not mere youthful mistakes. A viewing of the video footage in this case would quickly demonstrate why I say that. Vulnerable members of the community simply trying to make a living should not be subjected to terrifying events such as this. In saying that, I recognise that CCTV footage is very powerful, and may unduly highlight the seriousness of the offence in cases where it is available, over those where it is not. No doubt, in all of the cases of robbery in recent years CCTV vision would have been equally alarming, perhaps even more so, than that in your case.

19 The maximum penalty for your offence is life imprisonment. Parliament could not have made it any clearer how serious this offence is. The fact that you breached two bonds given to you by courts, and thus snubbed your nose at the courts, aggravates your offence even further. Although I will impose a significant sentence, it has been reduced because of the factors I have discussed, and because this is the first instance where the prosecution has sought to have the maximum sentence of life

imprisonment apply for sentencing purposes.

- 20 Solomon Tom, for the offence of robbery you will be convicted and sentenced to five years' imprisonment.
- 21 I will also deal with the two instances of good behaviour bonds. For your breach of the good behaviour bond imposed on 7 June 2011 I will order that the bond be set aside, and you be convicted of theft. For that offence, I sentence you to one month's imprisonment, to be served concurrently with the sentence of 5 years' imprisonment. For your breach of the good behaviour bond imposed on 17 January, I set aside the bond and convict you of unlawful assault. You will be convicted and sentenced to one month's imprisonment for that offence, to be served concurrently with the other sentences.
- 22 The total sentence, therefore, is five years' imprisonment, to commence on 18 June 2012.

Geoffrey M Eames AM QC

Chief Justice

20 June 2012