

IN THE SUPREME COURT OF NAURU
(APPELLATE JURISDICTION)

CRIMINAL APPEAL NO. 3/2000

BETWEEN : **MARLEY THOMA**

APPELLANT

AND : **DIRECTOR OF PUBLIC PROSECUTIONS**

RESPONDENT

DECISION OF DONNE, C.J.

I can find no fault with the Magistrate's sentence. He sentenced on the plea before him.

It is right for a sentence of imprisonment to be the answer to offences of unlawful wounding unless there be exceptional circumstances to justify other options.


Nauru is not going to be a cowboy island and anyone who acts in the way the Appellant did can expect to face imprisonment.

However, I have heard by way of mitigation the plea in mitigation by the Rev. Mr. Caleb who gives a glowing commendation of the Appellant's conduct and public spiritedness in Church and other affairs. I have also heard the condition of the Appellant's mother who died shortly after the incident. The Appellant was undoubtedly highly stressed about

the noise of the motor bike driven by the house where the dying woman was living. I am satisfied the accused's conduct was completely out of character and, while there was no excuse whatsoever for what he did, that fact and the fact that he did not attempt to hide from the Police how he had come into possession of the gun, allow me to vary the sentence. In so doing, I emphasise that on the information then before him, I am satisfied the Magistrate's assessment of sentence was correct. I have the benefit of facts not presented to him.

Appeal allowed in respect of sentence which is varied as follows:

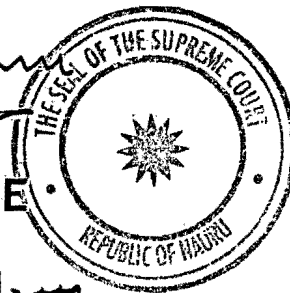
1. Unlawful Wounding - Imprisonment quashed and fine of \$600 imposed.

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| 2. | Illegal Possession of
firearm | · | Imprisonment quashed 
and fine of \$40 imposed. |
| 3. | Bodily Harm | · | Imprisonment quashed.
Convicted and discharged. |

Court costs \$15 (\$5 each Charge). Fines and Court costs are to be paid within one month from this date.

Allen Donne

CHIEF JUSTICE



20/4/2000