



Sentencing: Practice exercises

Case 1: Mrs Benno

Mrs Benno pleaded guilty to 20 charges of theft. The maximum penalty for each charge is four years' imprisonment.

She pleaded guilty two weeks after being first charged.

Use the format provided.

Tomorrow you will be asked to deliver your sentencing remarks as if you were the judge in court.

Summary of facts

Mrs Benno was employed in a bank as a cashier from 2012. She was responsible for taking cash deposits from customers and recording these against their accounts. On 20 occasions between 2013 and 2016, she stole cash deposits from bank customers. When a bank customer came to her as a teller, they would give her the cash they wished to deposit into their account and a deposit slip. Mrs Benno's job as a teller was to take the money and the deposit slip and enter the deposit into the customer's account.

On 20 occasions relating to different customers, Mrs Benno would destroy the deposit slip so there was no evidence of the deposit and she would keep the money for herself. The total amount taken was \$18,000.

A check by the bank revealed the theft. When questioned by the police Mrs Benno agreed she had taken the money. She said she had used the money for holidays and a new TV. She helped the police identify all the accounts she had taken money from.

The bank reimbursed the 20 customers the \$18,000 and now sought reparation of \$18,000 from Mrs Benno.

Probation report

Mrs Benno is 42 years old. She has been married for 15 years. She and her husband have no children. Her husband works as a supervisor. She says the bank did not pay her a fair salary and so she took the money. She used the money for holidays and a new TV. She and her husband own their house and a car. They have some savings. When asked about

reparation she said she was aware the bank had reimbursed the customers so she did not see why she should pay.

She regrets the thefts because it has ruined her life. Her husband has left her.

Submissions

The prosecution say this was a serious breach of trust involving a lot of money. Each of the 20 charges should have a prison sentence of three months' imprisonment, added together for a total sentence of 60 months' or 5 years' imprisonment. They ask for a reparation order of \$18,000.

The lawyer for the defendant says Mrs Benno regrets her crimes. She pleaded guilty early, and she helped the police with their investigation. The lawyer says Mrs Benno offers reparation of \$18,000, but only if the sentence is not imprisonment.

Case 2: Mr Bill and Mrs Brain

Mr Bill pleaded not guilty to threatening to kill (s 124 Penal Code 1977). He was convicted by you after a trial. The maximum penalty for a charge of threatening to kill is three years' imprisonment. You are to prepare sentencing remarks based on the attached summary of facts, the probation report and the submissions.

Use the format provided.

Tomorrow you will be asked to deliver your sentencing remarks as if you were the judge in court.

Summary of facts

After hearing the evidence, you concluded the following were the relevant facts.

Mr Bill and Mrs Brain had been neighbours for 20 years, each living on their own.

On the boundary between their properties was a large mango tree. Mr Bill and Mrs Brain both claimed the mango tree as their own.

They had argued about this for many years. On the 7th of December 2016, Mr Bill left his house early to go and pick some of the mangos for breakfast. He was shocked to see there were no mangos on the tree. He was sure Mrs Brain had stolen all the mangos. He went to his house and got his gun. He went to Mrs Brain's house, knocked on the door and said to her if she did that again he would kill her. While Mr Bill had the gun when he threatened Mrs Brain, he did not point the gun at her.

Probation report

Mr Bill told the probation officer he did not regret what he had done. Mrs Brain had stolen his mangos. She had to be told.

Mr Bill is a 61 year old man with no partner or children. He had worked as a public servant in the Transport Department all his life. He had his house and a car and some savings. He told the probation officer that he would rather go to prison than apologise to that woman. He had no intention of using the gun or of killing Mrs Brain. He had never previously been in Court.

Submissions

The prosecution said this was a very serious threat made with a gun. The defendant should go to prison. The police had been called many times when Mr Bill and Mrs Brain were arguing and the fault was always Mr Bill's.

Mr Bill, who represented himself, said he had only done what anyone else would do. Mrs Brain was a thief and he had just been protecting his property.

Case 3: Mr Fakafoi

Mr Iso Fakafoi is charged that he assaulted his neighbour Mrs Linda Toi. Mr Fakafoi pleaded guilty on his third appearance after the Magistrate insisted he could not delay the case any further. The charge was assault, which has a maximum penalty of one year's imprisonment.

You are to deliver your sentencing remarks tomorrow as if you are the judge.

Summary of facts

On the 4th of January this year, a number of young boys were playing cricket in the yard next to Mrs Toi's house. One of the boys hit the ball hard and it hit and broke a window in her house. Mrs Toi came out of the house very angry. Most of the boys had run away by this time but George was still in the yard. He wanted his cricket ball back. Mrs Toi saw George and ran over to him, grabbed him by the hair, slapped him on his face with an open hand and said: "I have told you boys before not to hit the ball into my windows". George ran off crying.

A few minutes later, Mr Fakafoi appeared. He was George's father. He yelled at Mrs Toi to come outside. He was angry. Mrs Toi came out of her house and began yelling at Mr Fakafoi that she was sick of the boys damaging her house. Mr Fakafoi said you should not hit my boy and he grabbed Mrs Toi by the chin and pushed her against the wall. When she tried to hit him, he punched her twice in the face and she fell down. She had bruising to her face.

The police were called and Mr Fakafoi was arrested.

The police prosecutor said in submissions there was nothing but continuous trouble between the families and a harsh sentence might help.

Mr Fakafoi said he was provoked by Mrs Toi because she had hit his son and she was always complaining and slapping the boys from around the neighbourhood. The boys were just being boys. He said Mrs Toi should be the one in court because she assaulted a child.

Case 4: Mr Kiraba

Mr Joe Kiraba is charged with the theft of two packets of biscuits and a packet of coffee from his local shop. The maximum penalty for each charge is three months' imprisonment.

You will be asked to deliver your sentencing remarks tomorrow as if you are the judge.

Summary of facts

On 16 June this year, Mr Kiraba was in the Chen grocery shop. The shop keeper, Mr Chen, saw him enter the shop. Mr Chen became suspicious because Mr Kiraba did not seem to be shopping for anything and so he took particular notice of Mr Kiraba. He noticed Mr Kiraba take two packets of biscuits from a shelf and hide them up his tee shirt. As Mr Kiraba went to leave the shop, Mr Chen stopped him and accused him of stealing the biscuits. Mr Kiraba became angry and pushed Mr Chen. There was a struggle and two packets of biscuits and a packet of coffee fell from under Mr Kiraba's tee shirt. Mr Kiraba then ran off. A few days later he was spoken to by the police and admitted he had stolen the goods. He said his family was hungry and stealing was the only way he could get food.

When Mr Kiraba first appeared in court, he pleaded not guilty. However shortly before his case was to be heard, he changed his plea to guilty.

Probation report

Mr Kiraba is 34 years of age. He is married with four children. He does not have a job nor does his wife have a job. They grow a few vegetables which they eat and sell some at the market.

Mr Kiraba has previously been convicted five times of similar thefts of food over the past five years. The probation service have tried to get him a job but Mr Kiraba has no skills and does not seem particularly interested in working.

Recommended sentence is a sentence of either community service or a fine.

Submissions

Mr Kiraba says he has to steal because he has no money for food for his family. He says it is ok to steal from Mr Chen because he has plenty of money.

The prosecutor says Mr Kiraba should go to prison because he needs to be taught a lesson not to steal.

Case 5: Mr Wambula

You are to prepare and deliver your sentencing remarks, based on the summary of facts, the submissions from the prosecutor and the defendant who does not have a lawyer, and the report from the probation officer. Use the format provided.

John pleaded not guilty at first but changed his plea to guilty the day before his trial for a charge of assault. The maximum penalty for a charge of assault is two years' imprisonment under s 14(3) Penal Code 1997.

You will be asked to deliver your sentencing remarks tomorrow as if you are the judge.

Summary of facts

On the evening of 6 December 2016, neighbours of Mr John and Mrs Joan Wambula heard yelling from their house. They called the police. When the police arrived, they found Mrs Wambula hiding in the bushes outside the house. She was bleeding from a cut inside her mouth and from a bleeding nose. Her three children were hiding with her. Mr Wambula was inside the house. He was drunk. He was breaking furniture. When the police asked him what had happened, he said his wife was always nagging and he was tired of her doing so. He had hit her in the face to shut her up.

Mrs Wambula said she had been punched three times in the face by her husband.

When the police arrested Mr Wambula and took him away, he yelled at his wife that he would "get her" for calling the police.

Mr Wambula has three previous convictions for assault within the last two years. Two are assaults on his wife, one a minor assault on another man. Mr Wambula has been sentenced to pay fines and to do community service for these past offences.

Probation report

Mr and Mrs Wambula have lived together for 20 years. They have three children aged 16 years, 12 years and nine years. Mr Wambula has a job which is just enough to keep the family. Mrs Wambula looks after the children and helps by growing vegetables for the family. Mr Wambula told the probation officer that his wife had been telling him to get a better job and he lost his temper and hit her. He said he was sorry for what he had done but that she should stop nagging him. Mr Wambula had initially left the house with the children but had returned after three days. Mrs Wambula told the probation officer that her husband had hit her before. She wanted him to stop hitting her but wanted the family to stay together.

The Probation Officer recommended imprisonment as this was Mr Wambula's third violence conviction.