

**IN THE HIGH COURT OF FIJI**  
**AT LAUTOKA**  
**CRIMINAL JURISDICTION**

**CRIMINAL CASE NO. HAC 118 OF 2019**

**STATE**

**V**

**S. N. [JUVENILE]**

**Counsel** : Ms. R. Uce for the State.  
: Ms. A. Bilivalu for the Juvenile.

**Date of Punishment** : 13 February, 2020

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**PUNISHMENT**

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*(The name of the Juvenile is suppressed he will be referred to as S.N.)*

1. The juvenile is charged by virtue of the following information filed by the Director of Public Prosecutions dated 19<sup>th</sup> September, 2019.

**First Count**

*Statement of Offence (a)*

**AGGRAVATED ROBBERY:** Contrary to section 311(1) (a) of the Crimes Act 2009.

***Particulars of Offence (b)***

S.N with others, on the 11<sup>th</sup> day of July, 2019 at Nadi in the Western Division robbed NITIN PRASAD NAIR of 1 x Samsung Galaxy A30 valued at \$599.00, 1 x Nokia mobile phone valued at 49.00, 1 x green wallet valued at \$5.00 and \$120.00 cash, all to the total value of \$733.00, and immediately before such robbery used personal violence on the said NITIN PRASAD NAIR.

**Second Count**

*Statement of Offence (a)*

**ESCAPING FROM LAWFUL CUSTODY:** Contrary to section 196 of the Crimes Act 2009.

***Particulars of Offence (b)***

S.N on the 16<sup>th</sup> day of July, 2019 at Nadi in the Western Division escaped from the lawful custody of POLICE CONSTABLE 5075 FABIANO KOIROKO.

**Third Count**

*Statement of Offence (a)*

**SERIOUS ASSAULT:** Contrary to section 277 (b) of the Crimes Act 2009.

***Particulars of Offence (b)***

S.N on the 16<sup>th</sup> day of July, 2019 at Nadi in the Western Division, resisted arrest by POLICE CONSTABLE 6095 NAVITALAI NAKETE.

2. On 2<sup>nd</sup> October, 2019 the juvenile pleaded not guilty to counts one and three but pleaded guilty to count two to the offence of escaping from lawful custody in the presence of his counsel. Thereafter on 13<sup>th</sup> November, 2019 the juvenile admitted the summary of facts read by the state counsel as follows:

1. *The juvenile – S.N – is 17 years of age, unemployed and resides at Korovuto village, Nadi.*
  2. *The complainant – POLICE CONSTABLE 5075 FABIANO KOIROKO – is 26 years of age, police officer based at the Nadi Police Station.*
  3. *On the 16<sup>th</sup> of July, 2019, the juvenile was arrested by the operation team in Nadi and escorted to the Crime Office at the Nadi Police Station. Whilst in police custody, the juvenile was frequently visiting the washroom. After sometimes, PW1 and PC Navitalai Nakete (PW2) saw the juvenile ran out of the Crime Office and went towards the government quarters. Both PW1 and PW2 ran after the juvenile and after pursuing him for sometimes, PW2 managed to arrest the juvenile and escorted him back to the Crime Office.*
  4. *On the 17<sup>th</sup> of July, 2019, the juvenile was interviewed under caution by PC 4962 Isimeli Bolakivei in the presence of a Social Welfare Officer namely Mr. Toutou at the Nadi Police Station. The juvenile was given all his rights and he voluntarily admitted that he had escaped from the Nadi Crime Office whilst in police custody (Q/A. 56).*
  5. *The juvenile was subsequently charged for one count of Escaping from Lawful Custody contrary to section 196 of the Crimes Act 2009. On the 2<sup>nd</sup> of October, 2019, the juvenile voluntarily pleaded guilty to the charge.*
3. After considering the summary of facts read by the state counsel which was admitted by the juvenile and upon reading his caution interview, this court is satisfied that the juvenile has entered an unequivocal plea of guilty on his own freewill.

4. This court is also satisfied that the juvenile has fully understood the nature of the charge and the consequences of pleading guilty. The summary of facts admitted satisfies all the elements of the offence of escaping from lawful custody.
5. In view of the above this court finds the juvenile guilty as charged.
6. The learned counsel for the juvenile presented the following mitigation and personal details:
  - a) The juvenile was 17 years at the time of the offending;
  - b) First offender;
  - c) Young offender;
  - d) Promises not to reoffend and is willing to reform;
  - e) Seeks forgiveness of the court;
  - f) Plead guilty at the first available opportunity;
  - g) Is remorseful of what he had done;
  - h) Co-operated with police.

#### **REASONS FOR THE COMMISSION OF THE OFFENCE**

7. Counsel for the juvenile submitted that the reason for committing the offence was because he was scared and confused.

#### **TARIFF**

8. The maximum penalty for the offence of escaping from lawful custody is 2 years imprisonment. The accepted tariff is between 6 months to 12 months imprisonment with the higher end of the tariff reserved for repeat

offenders (see *Viliame Tuibua v The State*, criminal Appeal No. AAU 0116 of 2007 (7/11/2008)).

9. Considering the seriousness of this offence any sentence imposed for this offending is to be made consecutive to any existing file. The reason for this stance is to ensure that sentence for this offence has a deterrent effect (see *Alifereti Misioka vs The State Criminal Appeal No. CAV 0012 of 2007 (21/02/2008)*).
10. A juvenile falls under a special category than adults when it comes to punishment under section 30 (3) of the Juveniles Act as a young person which prescribes the maximum punishment for young persons at 2 years imprisonment.

#### **AGGRAVATING FACTORS**

11. The following aggravating factors are obvious in this case:

- a) Premeditation

The facts show a degree of premeditation by the juvenile whereby he was frequently visiting the washroom which led to his escape.

#### **SOCIAL WELFARE REPORT**

12. As per the order of this court the Social Welfare Department prepared a pre-punishment report after conducting home assessment and interviews. The Social Welfare Officer recommends:

- (a) That the juvenile be granted a suspended sentence;
- (b) The juvenile to work in collaboration with a community supervisor to assist him in his rehabilitation.

## **PARENTAL SUPPORT**

13. From the pre-punishment report it is obvious to me that the parents of the juvenile take responsibility for the actions of their son. It appears to me that because both the parents were not living with the juvenile who was placed in the care of his uncle that the juvenile was left unsupervised. On 27<sup>th</sup> January, the juvenile informed the court that he has moved to Korovuto, Nadi with his father and was going to school.
14. Considering the objective seriousness of the offence committed, I select 6 months imprisonment (lower range of the tariff) as the starting point of the punishment. For the aggravating factors I add 3 months. The interim punishment now stands at 9 months imprisonment. For the early guilty plea, mitigation and the remand period the interim punishment is reduced by 3 months.
15. The final punishment is 6 months imprisonment. Under Section 26 (2) (a) of the Sentencing and Penalties Act this court has a discretion to suspend the final punishment since it does not exceed 3 years imprisonment.
16. In *State vs. Alipate Sorovanalagi and others*, Revisional Case No. HAR 006 of 2012 (31 May 2012), Goundar J. reiterated the following guidelines in respect of suspension of a sentence at paragraph 23:

*"[23] In DPP v Jolame Pita (1974) 20 FLR 5, Grant Actg. CJ (as he then was) held that in order to justify the imposition of a suspended sentence, there must be factors rendering immediate imprisonment inappropriate. In that case, Grant Actg. CJ was concerned about the number of instances where suspended sentences were imposed by the Magistrates' Court and those sentences could have been perceived by the public as 'having got away with*

it'. Because of those concerns, Grant Actg. CJ laid down guidelines for imposing suspended sentence at p.7:

*"Once a court has reached the decision that a sentence of imprisonment is warranted there must be special circumstances to justify a suspension, such as an offender of comparatively good character who is not considered suitable for, or in need of probation, and who commits a relatively isolated offence of a moderately serious nature, but not involving violence. Or there may be other cogent reasons such as the extreme youth or age of the offender, or the circumstances of the offence as, for example, the misappropriation of a modest sum not involving a breach of trust, or the commission of some other isolated offence of dishonesty particularly where the offender has not undergone a previous sentence of imprisonment in the relevant past. These examples are not to be taken as either inclusive or exclusive, as sentence depends in each case on the particular circumstances of the offence and the offender, but they are intended to illustrate that, to justify the suspension of a sentence of imprisonment, there must be factors rendering immediate imprisonment inappropriate."*

17. The following relevant special circumstances or special reasons for the suspension of the imprisonment term in my view needs to be weighed in choosing immediate imprisonment or a suspended punishment.
18. The juvenile is a young person as per the Juveniles Act, of good character, isolated offence was committed by him, he was living with his uncle at the Narewa Village without any parental support or supervision, he was 17 years of age at the time of the offending, pleaded guilty at the earliest opportunity, is genuinely remorseful, cooperated with police and takes full responsibility of his actions. These special reasons render immediate imprisonment inappropriate.

19. I am certain that with parental guidance, supervision and support the juvenile has a bright future ahead of him hence an imprisonment term will not augur well for his future, the juvenile is back at school continuing his year 11, the juvenile has been in custody which is in itself an adequate and appropriate punishment, an experience that will remind him to keep away from trouble. This court has taken into account rehabilitation over and above deterrence.
20. Having considered section 4 (1) of the Sentencing and Penalties Act this court is of the view that the punishment is just in all the circumstances of the case.
21. In summary the juvenile is given a punishment of 6 months imprisonment which is suspended for 2 years. The following orders are to take effect immediately.

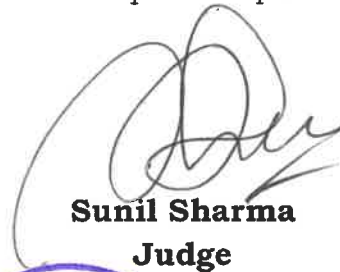
### **ORDERS**

- a) The juvenile is given a punishment of 6 months imprisonment which is suspended for 2 years with immediate effect; \*
- b) The parents of the juvenile are to sign a good behaviour bond on behalf of the juvenile in the sum of \$250.00. The Social Welfare Department is to immediately arrange for the counseling of the juvenile in the presence of his parents with the view of assisting the juvenile in keeping out of peer group influence and to engage in education and training;
- c) The Social Welfare Department is also at liberty to work out any programs or plans which will be in the interest of the juvenile;



- d) It is the responsibility of the parents of the juvenile to ensure that the juvenile obeys any directions given by the Social Welfare Department;
- e) A copy of this punishment is to be served on the Officer in Charge of the Social Welfare Department;
- f) 30 days to appeal to the Court of Appeal.

\*The juvenile is explained the meaning of a suspended punishment.

  
**Sunil Sharma**  
**Judge**



**At Lautoka**

13 February, 2020

**Solicitors**

**Office of the Director of Public Prosecutions for the State.**

**Office of the Legal Aid Commission for the Juvenile.**