



IN THE DISTRICT COURT OF NAURU

Criminal Case No 50 of 2018

THE REPUBLIC

-v-

JURONG BATSIUA

SENTENCE

*Before:* RM P. R. Lomaloma  
*For the Prosecution:* Mr. Filimone Lacanivalu  
*For the Defendant:* Mr. Sevuloni Valenitabua  
*Hearing:* 27 February 2019  
*Judgment:* 7 March 2019  
*Sentencing Submissions:* 11<sup>th</sup> March 2019  
*Sentence:* 18<sup>th</sup> March 2019

**Catchwords:** *Escaping from Lawful Custody; section 229 of Crimes Act 2016.*

**Introduction**

1. You were found guilty after a trial on one count of escaping from lawful custody contrary to section 229 of the Crimes Act 2016. The maximum sentence for this offence is 5 years imprisonment. The facts are set out fully in my judgment and I will only summarise the material facts for the sentence in here.
2. You were arrested on the 14<sup>th</sup> of May 2019 at about 9: 00 am from the Meneng Hotel for an alleged assault and taken to the Police station by Inspector Decima Deireragea. You

were booked in and taken to the cells where you were locked up. The two police witnesses said you were put up in a cell on your own but you said you were in the cell with Lanny, another detainee. The police have not proved this conclusively and I therefore give you the benefit of the doubt and find you were in the same cell as Lanny. The door to the cell was not locked but merely bolted with a latch that drops over a tongue in the bolt. The cell can be locked with a padlock but this was not done. Officer Goodman said that padlocks are not used at all at the cells because Police fear the situation where some people are locked in and the key is lost. You had been drinking and when you were put in the cell, you took a nap. When you woke up, the cell was open and there was no one around. You then walked to the reception area of the police station and saw no police officers there. You went outside and found a police vehicle reversing and several police officers watching. Some turned around and saw you but none asked what you were doing there. You went back to your cell and stayed there for some time. You then put on your shirt and came outside. You didn't see any police officers around so you went to the main road and hitched a ride to your girlfriend's place in Aiwo. At about 1:30 pm on the same day, Inspector Deireragea sent Constable Goodman to check the cells and they discovered you were missing. Two patrols were sent out to look for you and you were arrested peacefully at your girlfriend's place in Aiwo.

3. Your counsel argued that the offence was a strict liability offence and he relied on the defence of mistake of fact in section 45 of the Crimes Act to exonerate you but I found that the offence was not a strict liability offence and I found you guilty as charged.

### **Personal Circumstances and Mitigation**

4. You are 32 years old and married with 5 children ranging in age from 2 years to 15 years; You work at Canstruct, earning \$250 per week.
5. In mitigation, your counsel submitted that you genuinely believed that you were free to go. He said you are remorseful and you seek leniency from the Court. He asked for a non-custodial sentence.

### Seriousness

6. The starting point in any sentence is to assess the seriousness of the offending which is done by looking at your culpability and the harm caused, intended or likely to be caused by your offending. This was an intentional act and therefore highest on the culpability scale. There was no physical harm caused but your offending goes to the very heart of respect for the law and the Police as enforcers of the law.

### Aggravating Factors

7. You had been told you were under arrest and you were put in a cell which was bolted shut after you got in. You somehow got out of your cell. You had many opportunities at the Police station to ask the Police after you got out of your cell if you were free to go but you did not do so. You came outside the first time but seeing Police officers outside, you made your way back inside and when you came out the second time and there was no one to stop you, you continued with your escape. This shows that you formed the intention to leave without enquiring from a Police officer sometime after you returned to your cell. You then evaded police and left the Police station.
8. I would rate your offending at close to but below the midpoint for this offence.

### Previous sentences for this offence

9. In *Republic v Bronson Notte & Foreman Roland*,<sup>1</sup> I sentenced 2 adults to 6 months imprisonment for escaping from the Corrections Centre. In *R v UN*,<sup>2</sup> I sentenced a child who escaped from the Corrections Centre whilst he was on remand to one year's probation for escaping from lawful custody. UN was a child of 17 at the time and he escaped because he had been threatened by a relative of the victim of his alleged offence and being afraid for his life, escaped home. He was returned by his father to the Corrections Centre the next day.

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<sup>1</sup> NRDC Criminal Case No. 92 of 2018

<sup>2</sup> NRDC Criminal Case No. 27 of 2018

### Your Sentence

10. I have taken account of the matters in section 277 of the Crimes Act and I consider that a conviction is appropriate for your offending. I have taken into account the matters set out in sections 278, 279 and 280 of the Crimes Act and consider that a custodial sentence is necessary to send the message to the you and the public that if you are taken into custody by the police, you are not free to go unless clearly told by the Police that you are free to go. I find that a sentence of 6 months imprisonment as appropriate reduced to 4 months imprisonment because of the effects of the sentence on your young family of 5 children aged 2 to 15, which I am required to take account of in section 279(2)(o).

### Orders

11. You are sentenced to 4 months imprisonment.
12. You have 14 days to appeal.

  
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**Penijamini R Lomaloma**  
**Resident Magistrate**

