IN THE SUPREME COURT OF NAURU
AT YAREN
[CRIMINAL APPELLATE JURISDICTION]

Criminal Appeal No. 02 of 2019

BETWEEN: THE REPUBLIC

APPELLANT

MARAE ATAIA

RESPONDENT

BEFORE: **Keteca J**

Hearing of Hearing: **21st November 2025**

Date of Judgment: **12th December 2025**

Catchwords: Obstructing a public official: Contrary to Section 242(a)(b) of the Crimes Act 2016 **(the Act.)**

Appearances:

Counsel for the Appellant: **S. Shah**
Counsel for the Accused: **V. Clodumar**

JUDGMENT

BACKGROUND

1. The Respondent pleaded guilty to one count of Obstructing a public official: Contrary to Section 242 (a)(b) of the Act. The facts which the Respondent agreed with is outlined in the Sentence awarded by Resident Magistrate P. Lomaloma (RM), as he then was, as:

> *'At about 3:00 am on Sunday 20th June 2021, a police patrol had set up a checkpoint at Denig District to randomly check on driving licences and compliance with the Motor Traffic Act 2014. At about 4:00am you drove towards the checkpoint at speed and refused to stop when ordered by Police Constable Rex Adam to do so. Constable Johnathan Taumea chased you to the KPR store at Baitsi District where you abandoned your bike and ran away on foot with your passenger. Police searched the area and could not locate you that night. The police finally located and arrested you on 29th June in Nibok District.'*

2. The RM found the accused guilty as charged on 20th July 2021. In awarding the sentence, the RM noted:

> *'I have taken into account the matters set out in Sections 277-282 of the Crimes Act 2016 in particular your personal circumstances, the aggravating and mitigating factors and consider that a custodial sentence is not warranted. A conviction is in my opinion not warranted. I would therefore, without recording a conviction, order you to pay a fine of $500.'*

APPELLANT'S SUBMISSIONS

3. Although the Respondent pleaded guilty at the District Court, Counsel for the State says otherwise and submits that there was a trial. Counsel then adds that the District Court found the Respondent guilty on Counts 2, 3 and 4. This is clearly incorrect. The Respondent pleaded guilty to one count of Obstructing a public official contrary to Section 242(a)(b) of the Act.

4. There are three grounds of appeal, namely:
   i. The RM erred in law when he ruled that a conviction was not warranted;
   ii. The RM erred in law and in fact in his assessment of the seriousness of the offence and the level of culpability of the Respondent; and
   iii. The RM erred in law and in fact in considering irrelevant factors as sufficient grounds to justify a non- custodial sentence.

   On Ground one, Counsel relies on *State v Batiratu* [2012] FJHC 864; HAR001.2012 (13 February 2012) where CJ Gates refers to:

   [24] In ***State*** *v Nayacalagilagi* (2009) FJHC 73; HAC165.2007 (17th March 2009) Goundar J considered the principles upon which the discretion under the old section 44 of the CPC was to be exercised. His lordship summarized the position as:

   *"Subsequent authorities have held that absolute discharge without conviction is for the morally blameless offender, or for an offender who has committed only a technical breach of the law (**State** v. Nand Kumar [2001] HAA014/00L; **State** v Kisun Sami Krishna [2007] HAA040/07S; Land Transport Authority v Isimeli Neneboto [2002] HAA87/02. In Commissioner of Inland Revenue v Atunaisa Bani Druavesi [1997] 43 FLR 150 HAA 0012/97, Scott J held that the discharge powers under section 44 of the Penal Code should be exercised sparingly where direct or indirect consequences of convictions are out of all proportion to the gravity of the offence and after the court has balanced all the public interest considerations."*

5. Counsel submits that had the RM applied the relevant test from the *Batiratu case,* the Respondent would have been convicted resulting in a custodial sentence. Counsel then refers to a *R v Denuga* case with no proper citations. I will not consider the submissions referring to this case.

6. On Ground 2, Counsel refers to *Koroivuki v State* [2013] FJCA 15; AAU0018. 2010 (5 March 2013) where the Fiji Court of Appeal said at paragraph [27]:

'[27] In selecting a starting point, the court must have regard to an objective seriousness of the offence. No reference should be made to the mitigating and aggravating factors at this stage. As a matter of good practice, the starting point should be picked from the lower or middle range of the tariff. After adjusting for the mitigating and aggravating factors, the final term should fall within the tariff. If the final term falls either below or higher than the tariff, then the sentencing court should provide reasons why the sentence is outside the range.'

Counsel submits that offences against public officials are regarded as serious offences and the provisions under Sections 277-282 of the Act should have been considered fully. Counsel adds that had the RM done this, the Respondent would have been convicted followed by a custodial sentence.

7. On Ground 3, Counsel relies on the following cases:
   i. *R v Petersen* [1994] 2 NZLR 533- on the considerations for immediate custodial or suspended sentence;
   ii. *Naisua v State* [2013] FJSC 14; CAV0010.2013 (20 November 2013)- on the courts approach on appeals against sentence.

8. Counsel concludes that the RM erred in law and in fact in not convicting and awarding a non- custodial sentence against the Respondent.

SUBMISSIONS FOR THE RESPONDENT

9. In opposing the appeal, Counsel submits as follows:
   a. The Respondent did not physically obstruct the police in the performance of their duties. It was a 'technical breach 'of the law.
   b. The Respondent avoided the 'traffic blitz' (police road check point) by taking a private access road;
   c. The police may have been embarrassed and annoyed and thus they pursued the Respondent;
   d. The Respondent was unaware of the police pursuit until he stopped at a store in Baitsi. He ran fearing that the police would assault him;
   e. After a few days, he surrendered to police;
   f. He pleaded guilty and he is a first offender;
   g. The finding and the sentence by the RM were 'proportionate to the facts of offence and the mitigating factors presented at the trial.'

10. On Ground one, Counsel refers to the following assessments by the RM:
   a. On the seriousness of the offence-*[3] ' This was an intentional act and therefore highest on the culpability scale.'*
   b. On the possible harm caused by the offending-*[4] 'The definitions of physical and mental harm cannot apply in your situation because there is no evidence of any victim that suffered such harm.'*
   c. The RM added- *'The harm likely caused by your behaviour can only be measured in terms of risk. I consider the risks involved in your behaviour as moderately high.'*
   d. At paragraph [5]- '*I would therefore rate your offending at the lower end of the scale of seriousness for this offence.'*

e. At paragraph [10]- *'The prosecution referred the Court to my sentence **R v Gadeanang** [2021] Crim Case No. 08 of 2020 where I sentenced the offender to 14 months imprisonment for this offence. The accused on that case, which is on appeal, had refused to go with the police executing a search warrant and had set his two pit bulls on the police officers, forcing them to retreat. Your offending is not in the same league.'*

11. On State Counsels reference to the *Batiratu case*, Mr Clodumar distinguishes this case on the facts as it dealt with an accused pleading guilty to one count of assaulting a police officer in the execution of his duty. For the present appeal, Counsel submits that – *' the RM having found that there was no evidence of any harm caused to the police officers, and the risk to the police officers and public was at the lower end, applied his discretionary power under section 277(b) of the Crimes Act 2016 not to record a conviction for the Respondent and issued a fine of $500. This implied that the RM considered that the Respondent committed only a technical breach of the law to use the term in the Nayacalagilagi case."*

12. On Ground 2- Counsel submits that the RM has explained how he reached his decision on the culpability of the respondent and the risk level.' Mr Clodumar adds that the contention by Counsel that the RM did not fully consider Sections 277-282 of the Act is 'an outrageous proposition' and should not be considered by this court.

13. On Ground 3- Counsel submits that sentencing considerations are codified in Nauru under Sections 277,278, 279 and 280. In particular, Counsel refers to Section 280 of the Act which states:

    'A sentence of imprisonment may be imposed on a person **only** if:

    a. In the opinion of the court:
        (i) the person has shown a tendency to violence towards other people;
        (ii) the person is likely to commit a serious offence if allowed to go at large;
        (iii) the person has previously been convicted of an offence punishable by imprisonment;
        (iv) any other sentence would be inappropriate having regard to the gravity or circumstances of the offence; or
        (v) the protection of the community requires it; or
    b. a sentence of imprisonment is necessary to give proper effect to Sections 278 and 279.

14. Counsel adds that the plain reading of Section 280 is clear that imprisonment may be imposed **only** if conditions (i)-(v) exist. There is consistency in sentencing in the District Court with *Republic of Nauru v Amram* [2025] NRDC 3; Criminal Case 043 of 2024 (31 March 2025) being the most recent case where the nature of the offending was more serious and the Court still recorded a non- conviction.

CONSIDERATION

15. I have fully considered the submissions by both Counsels. I will deal with Grounds one and two together- did the RM err in not recording a conviction? Did the RM err in his assessment of the seriousness of the offence and the culpability of the Respondent?

Section 277 of the Act provides that where a court finds a person guilty of an offence, it may do any of the following:

a. record a conviction and order that the offender serve a term of imprisonment;
b. with or without recording a conviction, order the offender to pay a fine;
c. record a conviction and order the discharge of the offender;
d. without recording a conviction, order the dismissal of the charge for the offence; or
e. impose any other sentence or make an order that is authorised by this or any other written law of Nauru.

16. It is clear from the above provision that the RM had the discretion to record a conviction or not. Mr Shah submits that the RM should have considered the questions posed by the High Court of Fiji in the *State v Batiratu* case mentioned above. In that case, Gates CJ said:

'[29] The effect of the cases and the purport of the more detailed provisions of the Sentencing and Penalties Decree with regard to discharges can be summarized. If a discharge without conviction is urged upon the court the sentencer must consider the following questions, whether:

(a) The offender is morally blameless.
(b) Whether only a technical breach in the law has occurred.
(c) Whether the offence is of a trivial or minor nature.
(d) Whether the public interest in the enforcement and effectiveness of the legislation is such that escape from penalty is not consistent with that interest.
(e) Whether circumstances exist in which it is inappropriate to record a conviction, or merely to impose nominal punishment.
(f) Are there any other extenuating or exceptional circumstances, a rare situation, justifying a court showing mercy to an offender.

17. Before considering the contention by Counsel, it is to be noted that DIVISION 15.3 of the Act, on Sentencing, in particular, Sections 277- 282A are quite elaborate and detailed on the kinds of sentences, purposes of sentencing, and sentencing considerations that a court shall consider when sentencing an offender. It is to be noted further that the *Batiratu case* involved an offender who assaulted a police officer in the execution of his duties; which is more serious than the present case.

18. In this case, the RM considered the seriousness of the offence in the following terms- '*The starting point for your sentence is to determine the objective seriousness of your offending by looking at your culpability or blameworthiness and the harm caused, intended or likely to be caused by the offending. This was an intentional act and therefore highest on the culpability scale.*'

The RM added-'*Harm is defined in Section 8 of the Crimes Act 2016 to mean physical and mental harm. The definitions of physical and mental harm cannot apply to your situation because there is no evidence of any victim that suffered such harm. Your offending however, affects the confidence that people have in the police force to carry out their duty. We can infer that the police officer who chased you on the road and once you got off has put himself and other road users in danger. The harm likely to be caused by your behaviour can only be measured in terms of risk. I consider the risks involved in your behaviour as moderately high. I would therefore rate your offending at the lower end of the scale of seriousness.*'

At paragraph [11], the RM said:

'I *have assessed the seriousness of this offence at the lowest end of the scale and I consider that a custodial sentence is not necessary. You are living with your children and looking after them. You are a foreign national and a conviction might affect your chances of remaining in Nauru or renewing your visa to look after your children. Your plea of guilty at the first opportunity is in your favour and an appropriate discount in your sentence should be given to encourage others to plead guilty early and save time and cost of a trial.*'

19. From the above, the RM clearly looked at the sentencing considerations under Section 279(2) of the Act. Further, I note from the facts of the case, there was no physical altercation between the Respondent and the police officers. The Respondent did not intimidate or resist the police. The offending did not involve the use of a weapon or cause any form of harm to the police officers or any bystander. The Respondent did not stop when called upon by the police and avoided the police checkpoint. I find that the RM was correct in holding that the conduct of the Respondent was at the 'lower end of the scale of seriousness.' I also agree with Counsel for the Respondent that the nature of the offending in the present case is more of a technical breach as CJ Gate's remarks in the *State v Batiratu case*. I will add that the mere avoiding of a checkpoint without any physical obstruction, intimidation, resisting or causing harm to the police officers on duty and other road users lends support to the RM's assessment and conclusions. On the contention that the RM did not fully consider Sections 277-282 of the Act, I agree with Mr Clodumar that it is an outrageous proposition. I dismiss Grounds one and two of the appeal.

20. On Ground 3, I also agree with Mr Clodumar that Section 280 of the Act is clear that a sentence of imprisonment may be imposed "only if" the factors in (i) – (v) and (b) exist. I add that there is no evidence that the Respondent showed a tendency for violence towards people. There is no evidence that the Respondent was likely to commit a serious offence if not imprisoned. The Respondent is a first offender, he has not been convicted of an offence punishable by imprisonment. There is also no evidence that imprisonment was warranted here to give proper effect to Sections 278 and 279 of the Act. I agree with the RM's finding, assessment and sentence awarded in this case.

21. I further hold that sending the Respondent to prison in this case would be absurdly, and manifestly excessive, and totally disproportionate to the technical nature of the offending. Ground 3 for the appeal is also dismissed.

CONCLUSION

22. The appeal is dismissed in its entirety.

DATED this 12th day of December 2025

Kiniviliame T. Keteca

Judge

SUPREME COURT OF NAURU