

IN THE MAGISTRATE'S COURT OF THE REPUBLIC OF FIJI
AT SUVA

CRIMINAL CASE No: 402 of 2019

STATE

-Vs-

SIMIONE VUETAKI NAULUVULA

BEFORE : Mr. Lakshitha Jayawardhana, Resident Magistrate

JUDGEMENT ON : 28th June 2023

COUNSEL : Inspector Qerewaqa, L. for the Prosecution
Ms. Deen, A and Mr. Panapasa, V. (Legal Aid Commission)
for the accused

SENTENCE

1. SIMIONE VUETAKI NAULUVULA, you were found guilty after the trial and convicted by this court by the judgement dated 28th June 2023 for two counts. **Count 01: Robbery** contrary to Section 310 (1) (a) (i) of the Crimes Act and **Count 02: Escape from lawful custody** contrary to Section 196 of Crimes Act No. 44 of 2009. You have submitted your mitigation through your counsel on 29-06-2023 and the following are your sentences.
2. In deciding a suitable sentence for the offences committed by you I have considered the oral mitigation submission made on behalf of you and the sections 4, and 15 of the Sentencing and Penalties Act 2009.
3. The maximum punishment for **Robbery** is 15 years of imprisonment.
4. Tariff for the offence of Robbery is settled by **Brien Keith J.** in **State v Tawake** [2022] FJSC 22; CAV0025.2019 (28 April 2022) as follows:
"[25] For my part, I think that this framework, suitably adapted to meet the needs of Fiji, should be adopted. There is no need to identify different levels of culpability because the level of culpability is reflected in the nature of the offence, and if the offence is one of aggravated robbery, which of the forms of aggravated robbery the offence took. When it comes to the level of harm suffered by the victim, there should be three different levels. The harm should be characterized as high in those cases where serious physical or psychological harm (or both) has been suffered by the victim. The harm should be characterized as low in those cases where no or only minimal physical or psychological harm was suffered by the victim. The harm should be characterized as medium in those cases in which, in the judge's opinion, the harm falls between high and low."

5. Their Lordships, the Supreme Court in the **State v Tawake** (Supra) case further stated that according to the harm suffered by the victim of the offence of robbery there can be three deferent tariff levels, i.e: High, Medium or Low. The accused has to commit this offence alone and without using a weapon. The starting points and sentencing range suggested in Tawake case are:

Level of Harm	Starting Point	Sentence Range
High	5 years	3 to 7 years
Medium	3 years	1 to 5 years
Low	18 months	6 months to 3 years

6. Maximum punishment for the offence of **Escaping from lawful custody** is 05 years of imprisonment.
7. Tariff for the offence of Escaping form lawful custody sets out in the case of **Tuibua v State** AAU0116.2007 by the Fiji Court of Appeal and stated that a sentence between 6- and 12-months imprisonment is an appropriate tariff for the offence.
"In order to assist uniformity and consistency in sentencing for the offence of escape from lawful custody, we feel it appropriate to state that a sentence of between 6- and 12-months imprisonment is an appropriate usual tariff for this type of offence. But as with all tariffs for all offences there will always be cases which because of their peculiar facts fall outside the usual permissible range of sentences for this type of offence. In approving the usual tariff, we are in no way intending to put a strait jacket on sentencing judges and magistrates."
8. I consider the offence of "Robbery" as the base offence in considering an appropriate sentence for you. The said offence carries the highest imprisonment term out of the above two offences you have committed.
9. You have committed a serious offence. I find that a prison term is warranted for this offence. I have considered **Tawake** (supra) principles and according to the low level of harm implicated on the victim, I take the 18 months starting point for your sentence.
10. I find no aggravating factors for this offence.
11. I have considered your personal circumstances submitted for your mitigation. However, those are not eligible for any deduction form your sentence. But according to the evidence adduced before me, it is clear that this offence you have committed on the spur of the moment with little or no planning. I consider it as a mitigating factor as per **Tawake** (Supra) principles and grant you one (01) months discount for the sentence. Now your sentence is at 17 months.
12. You were remanded in custody from 13-03-2019 to 12-02-2020 (eleven (11) months) for this case; hence you are entitled for a deduction of that 11 months from your sentence

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as provided in section 24 of the Sentencing and Penalties Act. The final sentence on this count therefore is Six (06) months imprisonment term.

13. In respect of the count of **Escape from lawful custody** I commence your sentence at Six (06) months imprisonment. No further adjustments shall be made to this starting point, as all adjustments for aggravating and mitigating factors have been made to the "base offence". As such, your final sentence for the count of Escape from lawful custody shall be Six (06) months imprisonment.
14. The aggregate on two counts shall be Twelve (12) months of imprisonment. Considering the 'totality theory' and the fact that both offences had been committed in the same transaction, I order both sentences to run concurrent to each other. Thus, the effective aggregate on two sentences shall now be at Six (06) months imprisonment.
15. Pursuant to section 26 of the Sentencing and penalties Act, this court has the power to suspend your aggregate sentence as it is not exceeding two years of imprisonment.
16. I consider the guideline cases on suspension: **DPP v Jolame Pita** (1974) 20 FLR 5, **DPP v Saviriano Radovu** (1996) 42 FLR 76 and **Deo v State** (2005) FJCA 62 and shall consider whether there are any special circumstances to justify a suspension.
17. Having considered overall facts before this Court and the fact that you have two active previous convictions for the offences of similar nature, this court finds no exceptional circumstances to suspend your sentence. You shall serve your sentence in custody.
18. Summary of your sentence is as follows:
 - Count 01: **Robbery**- Six (06) months imprisonment
 - Count 02: **Escape from lawful custody**- Six (06) months imprisonment
 - Count 03: **Resisting Arrest**- Charge dismissed and accused acquitted as per ruling dated 29-12-2022.

The above two sentences to be run concurrent to each other and thus the **aggregate sentence is Six (06) months imprisonment, to be served in custody forthwith.**

19. 28 days to Appeal to the High Court.




Lakshitha Jayawardhana
Resident Magistrate

At Suva, on this 29th day of June 2023.