



IN THE DISTRICT COURT OF NAURU

Criminal Case No 2 of 2020

THE REPUBLIC

-v-

JAYGILL DAGEAGO

SENTENCE

Before: RM P. R. Lomaloma  
For the Prosecution: Ms. Francis Puleiwai  
For the Defendant: Mr. Ravunimasei Tagivakatini  
Sentencing Submissions: 6<sup>th</sup> August 2021  
Sentence: 13<sup>th</sup> August 2021

**Catchwords:** Sentence—Escaping from Lawful Custody; section 229 of Crimes Act 2016.  
Sentence—Breach of bail condition contrary to section 27(1) of the Bail Act 2018

**Introduction**

1. You pleaded guilty to on one count of breach of bail condition contrary to section 27(1) of the Bail Act 2018 and one count of escaping from lawful custody contrary to section 229 of the Crimes Act 2016. The maximum sentence for the second count is 5 years imprisonment and for the first count, the maxim sentence is a fine of \$2000 or 2 years imprisonment or both.

**The Facts**

2. The facts are that on 9<sup>th</sup> of January 2020, you were charged with unlawful supply of illicit drugs contrary to section 6(a) of the Illicit Drugs Control Act 2004. You appeared in court on 9<sup>th</sup> January 2020 and you were bailed in the sum of \$800 with a surety. Clause 9 of your bail required you to “personally attend the Court House at Yaren on Tuesday 12<sup>th</sup> February 2020 at 10:00 a.m. and shall continue to attend from day to day and at each day adjournment of the court.” On 12<sup>th</sup> February 2020, when the matter was called, you failed to turn up and the court ordered a bench warrant for your arrest. You turned up at 10:34 and said you did not have your motorbike and hence you were late. The court cancelled the bench warrant and you were informed to return to court on 25<sup>th</sup> February 2020. On 25<sup>th</sup> February the matter was called and your counsel asked for further time before your plea was taken. The court granted that and set the matter for plea on 12<sup>th</sup> March. On 12<sup>th</sup> March, you failed to turn up and a bench warrant was issued for your arrest. On 30<sup>th</sup> March 2020, the police tried to execute this bench warrant but you were not at home when they arrived. They left a message with your mother for you to

surrender to court. The police then left on another task and when they returned to your home in Meneng, you were sitting on the porch. When you saw the police, you ran away and they chased you to the cemetery at Yaren District where you were caught and arrested and taken to the police station in handcuffs.

3. Later in the day, 30<sup>th</sup> of March 2020, you escaped from the Police station with another and were seen by two of the officers who had arrested you earlier in the day. They chased you but you escaped. You were arrested the next day at the hospital.
4. You agreed with the summary of facts and I found you guilty of the two offences as charged.

### **Circumstances of the offending**

5. Your counsel said you could not remember the reason you did not appear on 12<sup>th</sup> March 2020 as it has been over a year now. As to the second count, you said through your counsel that you panicked when you saw the police coming and instinctively fled. When you were in the cell, one Pieta Kepae was in the adjoining cell and both cell doors were not locked. Pieta managed to open his cell and then opened your cell to let you out. Your counsel submits that peer pressure from Pieta Kepae, who is older than you by 1 year, led you to escape with him.

### **Personal Circumstances and Mitigation**

6. You were born on 21 November 2001 and you were over 18 at the time of your offending on 20<sup>th</sup> March 2020. You are now 19, single and live with your parents and sibling at Denig District. You work in the construction industry and earn \$350 per week.
7. In mitigation, your counsel submitted that: -
  - (a) You pleaded guilty on 9 July 2021 after the record of the court was provided to you;
  - (b) You are a first offender;
  - (c) You are a young offender; and
  - (d) You are currently working and helping support your family.

### **Seriousness**

8. A court is required to pass a sentence that is commensurate with the seriousness of the offence. The seriousness of an offence is determined by two main parameters—the culpability of the offender and the harm caused or risked being caused by the offence. The seriousness of the offence will determine: -
  - (a) which of the sentencing thresholds has been crossed;
  - (b) indicate whether a custodial, community or other sentence is the most appropriate; and
  - (c) be the key factor in deciding the length of a custodial sentence, the onerousness of requirements to be incorporated in a community sentence and the amount of any fine imposed.
9. Count 1—Breach of Bail condition. This is a strict liability offence and the prosecution is not required to prove a fault element of the offence so I have no idea of your culpability. The court will have to sentence you based on the circumstances of the offending.
10. Count 2—Escape from lawful custody. This was an intentional act and therefore highest on the culpability scale. The harm caused is the effort by police in trying to recapture you. This harm however is reduced by the laxity of the police by not locking the cell in

which you were detained. This is not the first case where this has occurred and it is a matter to be taken into account in your sentence.

### Aggravating Factors

11. The aggravating factor for the first count is that you ran away from police trying to enforce a warrant for your arrest to bring you to court to give reasons why you failed to turn up in court.
12. The aggravating factor for this offence is that it was committed whilst you were on bail.

### Submissions

13. I have been referred by to two sentencing cases: *R v Ball (1951) 35 Cr App R 164* and *R v Jeremiah*<sup>1</sup> which quoted the New Zealand case of *R v Raddick [1954] NZLR 86*. *R v Jeremiah* was overturned on appeal to the High Court of Australia. These are old cases where the judges had great discretion in their sentences. The practice of sentencing in the UK and New Zealand is now more structured. Guideline judgments started appearing in the UK around 1976 and in New Zealand, there are now guideline judgments made by the NZ Court of Appeal on the more serious offences.
14. The UK Sentencing methodology is now guided by the UK Sentencing Guidelines which are prepared by the UK Sentencing Guidelines Council. The Guidelines have been adopted in New Zealand. In *R v AM [2010]*<sup>2</sup> the NZ Court of Appeal said this for example: -

*[18] .... The guidelines presently issued by the Sentencing Guidelines Council are very largely based around existing sentencing practice but the way in which they are developed allows for a wide range of public consultation. Because sentencing practice in England and Wales is very similar to our practice, the work of the Sentencing Guidelines Council has been influential in the way in which this Court deals with sentencing issues.*

15. The New Zealand Court of Appeal now sets guideline sentences for offences in New Zealand based on the UK SGC Sentencing Guidelines but modified to suit statutory and other factors local to New Zealand. *R v M* (supra) is a guideline judgment for rape and sexual violation in NZ. The UK Guidelines on sentences are followed in sentencing in Fiji and several jurisdictions in the Pacific
16. The two sentences from the UK and NZ that I was referred to emphasizes the primacy of the punishment and public interest in sentencing. Section 278 of the Crimes Act 2016 deals with the purposes of sentencing and does not rank any factor above the others. This means that one purpose might be more important in one set of circumstances but not in another. Where children are concerned, for instance, the Child Protection and Welfare Act makes the interest of the child paramount and rehabilitation and diversion would be important purposes.

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<sup>1</sup> [2017] NRSC 26 Criminal Appeal 101 of 2016

<sup>2</sup> NZCA 114; [2010] 2 NZLR 750; (2010) 24 CRNZ 540 (31 March 2010)

**Previous Sentences for Escaping from Lawful custody**

- 17. In *Republic v Bronson Notte & Foreman Roland*,<sup>3</sup> I sentenced 2 adults to 6 months imprisonment for escaping from the Corrections Centre. They were convicted prisoners who broke out of the old corrections centre to visit relatives and returned in the morning to the centre. They used a bar to cut open the fence.
- 18. In *R v UN*,<sup>4</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.
- 19. In *R v Jurong Batsiua [2019] NRDC Criminal Case No 50 of 2018*, the accused was sentenced to 4 months imprisonment for this offence. He was under arrest and escaped from police custody when police left him in the cell without locking the door and without anyone guarding the cell.

**Your Sentence**

- 20. Count 2 carries a maximum sentence of 5 years imprisonment and will be the head sentence. 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 deter you and the public from this offending.
- 21. I consider a starting point of 6 months imprisonment is appropriate. I increase this by 1 month for the aggravating factors I reduce this by 2 months for the mitigating factors, leaving a notional sentence of 5 months. For the plea of guilty, albeit late, I reduce your sentence by 1 month, leaving your sentence at 4 months.
- 22. For count 1, the maximum sentence is a \$2,000 fine or a 2 years imprisonment. Most people who fail to turn up when they should are either excused because they have a valid reason for not attending or forfeit their bail. I have taken all the matters in section 278-280 of the Crimes Act 2016 the circumstances of your offending, the aggravating factor, the mitigation and your plea of guilty and I consider that a custodial sentence is not necessary for your offending.
- 23. I therefore fine you in the sum of \$200.00 for breaching a bail condition in count 1.

**Orders**

- 24. You are convicted of escaping from lawful custody and sentenced to 4 months imprisonment for count 2
- 25. Without recording a conviction, I fine you in the sum of \$200.00, 5 months to pay and in default, 20 days imprisonment for count 1
- 26. You have 14 days to appeal.

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

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<sup>3</sup> NRDC Criminal Case No. 92 of 2018  
<sup>4</sup> NRDC Criminal Case No. 27 of 2018