



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

**Criminal Case No. 13 of 2021**

**BETWEEN:** THE REPUBLIC

**PROSECUTION**

**AND:** RANDY DOGUAPE

**ACCUSED**

**BEFORE:** Keteca J

**Date of Submissions:** 21<sup>st</sup> July 2024

**Date of Sentence:** 28<sup>th</sup> July 2024

**Case may be cited as:** Republic v Randy Doguape

**Catchwords:** Being Found in Certain Places without Lawful Authority

**Appearances:**

**Counsel for the Prosecution:** S. Shah

**Counsel for the Accused:** S. Hazelman

**SENTENCE**

**BACKGROUND**

1. The Accused was convicted by the Court of Appeal on 03rd May 2024 on one count of – Being Found in Certain Places Without Lawful Authority or Excuse: Contrary to section 164 (a) (i) of the Crimes Act 2016.

2. The maximum penalty for this offence is 12 months imprisonment.

### **SENTENCING SUBMISSIONS**

3. In addition to Section 164, Mr Shah also made submissions under Section 117 Crimes Act 2016 – Indecent Acts in Relation to a child under 16 years. The accused was acquitted on this count in this Court. The State only appealed the Section 164 charge which was upheld by the Nauru Court of Appeal.

4. Mr Shah referred to the following Fiji Magistrates Court cases that dealt with a similar offence of criminal trespass:

- a) State v Delainarorocake [2017] FJMC 71- the accused had entered the dwelling of the complainant and touched her thighs whilst she slept. He was sentenced to six months imprisonment;
- b) State v Dohra- accused was sentenced to five months imprisonment suspended for two years;
- c) State v Bolatagane- accused was sentenced to two months imprisonment suspended for one year.
- d) Gabriel Buli v The State Criminal Case 438 Of 2011 - for 08 Counts of Criminal Trespass, the accused was sentenced to 12 months imprisonment.

5. Counsel also refers to the following Nauru District Court cases:

- a) Republic of Nauru v Pickering - [2023] NRDC 10; - 42 months imprisonment for the count of indecent act and 06 months for the section 164 charge;
- b) R v Aroman- [2020] NRDC 17- 08 months imprisonment;

6. He submits that in the present case, the court should impose a harsh custodial sentence as the accused entered a dwelling house where children were sleeping.

#### **DEFENCE SUBMISSIONS**

7. Counsel refers to the following cases:

- a) Republic of Nauru v Taumea [2019] NRDC 3- . The accused was found guilty of Indecent Acts and pleaded guilty to Being Found in Certain Places without Lawful Authority. The accused was fined \$300 for the section 164 offence. The sentencing remarks of the Magistrate reflect that the sentence was low as the 'complainant had asked for a lenient sentence as they had reconciled with the accused.'
- b) Republic v AD - Sentence [2020] NRDC 10- three juveniles who were found on the veranda of the complainant at 7am in the morning were sentenced to 04 months and 03 months imprisonment respectively.

8. Counsel submits as follows:

- a) The accused is 27 years old. He is casually employed earning \$50-\$100 weekly.
- b) On 03rd June 2024, for the offence of being found in possession of illicit drugs, he was fined \$1500 in default 06 months imprisonment. It was also ordered that, under the supervision of the Chief Probation Officer, he was to do some community work within 04 months.
- c) That any time spent in remand be considered;
- d) A non- custodial term would fair here.
- e) If a custodial sentence is awarded, since he was acquitted on the indecent act charge, the sentence should be suspended; and
- f) The offence warrants a conviction. Counsel appears to have forgotten that the accused has already been convicted by the court of Appeal on 03rd May 2024.

### **What is the Appropriate Sentence Here?**

9. I have considered Sections 278, 279 of the Crimes Act 2016.

10. The prosecutor has submitted that imprisonment is appropriate here. I have considered Section 280 which provides:

‘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 the 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.’

11. I note Section 282 of the Crimes Act 2016 which gives a court the power to reduce penalties.

12. I also consider that you were in remand for thirty-seven (37) days pending your trial and release in 2021. This period falls outside Section 282A as this Section 164 offence does not come under Part 7 of the Crimes Act 2016.

13. Considering the sentences for this offence established in the cases mentioned above, the submissions by Counsels, the nature of offending-(though self-induced, you were unaware of what you were doing), the promotion of your rehabilitation, I believe that an immediate custodial sentence will not be appropriate here.

**ORDERS**

14. You are sentenced to six months imprisonment.

15. This is suspended for two years.

DATED this 28th day of July 2024.

  
**Kiniviliame T. Keteca**  
**Judge**

