

IN THE RESIDENT MAGISTRATES COURT
AT SUVA
CRIMINAL JURISDICTION

Juvenile Case Nos. - 04 of 2018

- 07 of 2018

The State

V

J. N. S.

For the State : WPC Priti
For the Juvenile : Counsel Ms. Naidu (Legal Aid)
Date of Punishments : 03rd May 2018

PUNISHMENT

Introduction

1. You have been charged with one count of **Escape from Lawful Custody** in each case contrary to Section 196 of the Crimes Act No. 44 of 2009. I have prepared both punishments in the same order of court, for the purpose of convenience. Particulars of offences of each case are as follows;

Case No. 04 of 2018

You, on the 10th day of January 2018, at Samabula in the Central Division, being in the lawful custody at Juvenile Centre, escaped from the custody of Uliano Kataiwai.

Case No. 07 of 2018

You, on 19th day of January 2018, at Samabula in the Central Division, being a remanded juvenile, escaped from the custody of Uliano Kataiwai.

2. You have pleaded guilty to charges in both cases on 12/03/2018 on your free will and with a representation from a counsel from Legal Aid.
3. The prosecution has filed the Summary of Facts on the same day in both cases which have been duly admitted by you. They revealed that in respect of Case No. 04 of 2018, on 10th January 2018, at about 2pm, while you were sitting on the couch in the office at the Juvenile Centre, you were unattended by the officer who was on duty for few minutes and you have escaped during that time.
4. In respect of Case No. 07 of 2018, when you were re-admitted to the center after the escape incident on 10th January 2018 (Case No. 04 of 2018), on 19th January 2018, you have again escaped after attending the gym session at the Centre.
5. In both instances you have been later arrested and interviewed under caution whereby you have admitted committing alleged offences.
6. Being satisfied with your unequivocal plea of guilt and the admitted summary of facts which satisfy the elements of the offence in both cases, I find you guilty to the offences of **Escape from Lawful Custody** as set out in charges in Case Nos. 04 of 2018 and 07 of 2018.

Tariff

7. The maximum penalty for Escape from Lawful Custody is 2 years imprisonment. The tariff for this offence has been discussed in the case of *Dwyane Hicks v The State* Criminal Appeal No. HAA 018 of 2011 (unreported-19 August 2011) to be in the range of **6-12 months** imprisonment with the higher end of the tariff reserved for repeat

offenders. The same view has been expressed by the Court of Appeal in an earlier occasion in Viliame Tuibua v. The State (2008) FJCA77; AAU0116of2007S.

7. In addition to the aforementioned tariff, in terms of section 30(3) of the Juvenile Act, this court has a limitation in deciding an appropriate punishment for Juveniles, which says, *a young person shall not be ordered to be imprisoned for more than 2 years for any offence.*

Aggravating Factors

8. You have committed the offence in respect of Case No. 08 of 2018 while on bail for another case (04 of 2018) in similar nature. You have repeated this offence within a very short period of time (8 days)

Mitigating Factors

9. You were 17 years old at the time of both offences.
10. You have apologised to court and promised not to re-offend. You seek leniency of the court.
11. You have said that you need to assist your old aged father and young siblings.

Early Guilty Plea

12. You have pleaded guilty at the earliest available opportunity saving time of the court and the expenses of a full trial. According to your submissions, you are remorseful and apologised to court. Therefore, your early guilty plea should attract a considerable concession on your punishment.

Analysis & Punishments

13. Escaping from Lawful Custody is undoubtedly a very serious offence. You should be deterred from committing further offences.
14. You have committed the same offence in 5 times during last two years (Case Nos. 20 of 2016, 39 of 2016, 08 of 2017, 09 of 2017 & 44 of 2017). Therefore this court is not in a position to give you any concession on your previous good character.

Punishment for the Case No. 04 of 2018

15. Considering the nature of your offence, I select 10 months imprisonment term as a starting point and deduct 3 months for the early guilty plea and another 1 months for the other mitigating factors making your final punishment is 6 months imprisonment term. You have spent 15 days in custody for this case and I further deduct such period from your punishment and your actual imprisonment term is **5 months and 15 days**.

Punishment for the Case No. 07 of 2018

16. Considering the nature of your offence, I select 8 months imprisonment term as a starting point and add another 2 months for the aggravating factors making it 10 months imprisonment term. I deduct 3 months for the early guilty plea and another 1 months for the other mitigating factors making your final punishment is 6 months imprisonment term. You have spent 09 days in custody for this case and I further deduct such period from your punishment and your actual imprisonment term is **5 months and 21 days**.

17. Now I will consider whether your punishments should be suspended.
18. You have been given 2 probation orders in earlier cases and they are still in operation. Though it is important to consider the rehabilitation aspect of punishment for a young offender like you in terms of the section 4 of the Sentencing and Penalties Act 2009, since you are a repeat offender, it is obvious that you have not made use of previous opportunities given to you for rehabilitation purposes. The offenders of this calibre should be deterred from further offending. Therefore your both of your punishments should be activated with immediate effect.
19. Both punishments in respect of Case No. 04 of 2018 and 07 of 2018 are to be served concurrently.
20. 28 days to appeal.

Summary of the punishment-

Case No. 04 of 2018 - 5 months and 15 days imprisonment term
Case No. 07 of 2018 - 5 months and 21 days imprisonment term



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Geethani Wijesinghe
Resident Magistrate

At Suva

16th April 2018

03/05/2018.

