

IN THE MAGISTRATES' COURT OF FIJI  
AT TAVUA  
CRIMINAL JURISDICTION

Criminal Case No: 117 - 2018

STATE

-v-

SEMESA BOKINI

Before : RM Fotofili L.  
For Prosecution : WPC Chand A. [ Police Prosecution ]  
For the Defendant : In Person  
Date of Newton Hearing : 25<sup>th</sup> February 2020  
  
Newton Ruling and Sentence : 2<sup>nd</sup> June 2020

**SENTENCE**

**BACKGROUND**

1. SEMESA BOKINI, you have pleaded guilty to the following charge:

***Count 1***

***Statement of Offence***

**SERIOUS ASSAULT**: Contrary to section 277 (b) of the *Crimes Act of 2009*.

***Particulars of Offence***

SEMESA BOKINI on the 20<sup>th</sup> day of March 2018 at Tavua Hospital in the Western Division assaulted **Police Constable 5272 Asish** in the due execution of his duty.

***Count 2***

***Statement of Offence***

**ESCAPE FROM LAWFULL CUSTODY**: Contrary to section 196 of the *Crimes Act of 2009*.

### Particulars of Offence

**SEMESA BOKINI** on the 20<sup>th</sup> day of March 2018 at Tavua Hospital in the Western Division being in the lawful custody of **Police Constable 5272 Asish**, escaped from such lawful custody.

2. I am satisfied that your plea is voluntary and that your plea is supported by the evidence [ except for the Count 1 which has been explained in the *Newton* Ruling], together with your admission in court. I am also satisfied that you understand the consequence of your plea and admission.
3. You did not accept the prosecution's claim that you punched and caused injuries to the police officer who was escorting you on the day in question to the hospital to be examined pursuant to a court order in one of your pending cases.
4. I held a *Newton* hearing to determine the disputed fact and during that hearing I received oral evidence from the police officer who had escorted you. I have given my determination earlier providing the reasons why I have not accepted the prosecution's claim.
5. I have found beyond a reasonable doubt that it was around midday. A police officer escorted the defendant to the Tavua Hospital for the defendant's leg to be treated. I also take judicial notice of the records in another file Tavua EJR 02 – 2018 where the defendant is charged with another for aggravated robbery. They were produced for the first time in police custody in that case on the 20<sup>th</sup> of March 2018 before my brother Magistrate. The learned Magistrate ordered that the defendant be medically examined after the defendant complained of an injury to his foot. The defendant was remanded in custody to be escorted to the hospital. The defendant was treated at the hospital where he received an injection and 'dressing' was done to his leg. The defendant was then escorted from the dressing room to await the arrival of a police vehicle which I have no trouble accepting would then convey the defendant to the remand centre in due course. While waiting for the police vehicle, the defendant 'tapped' the hand of the escorting police officer away and the defendant ran. You hid in between some bamboos until it got dark and then you went to your village. You slept there until the morning when your family advised you to wait for the police. You were then arrested by police. You were on the run for about a day.
6. You were then interviewed on the day of your arrest by police. You admitted running away because you did not like the food in remand.
7. I did not find there to be any lawful justification in your assault of the police officer and in your escape.

8. I have acquitted you of the 1<sup>st</sup> Count – Serious Assault as I did not find that you punched and caused injuries on the officer but that you tapped the officer’s hand and I have convicted you of the lesser offence of common assault contrary to section 274 of the Crimes Act 2009.
9. I have convicted you find you of the 2<sup>nd</sup> Count – Escape from lawful custody.
10. You are a first offender.
11. I will not consider any time you have spent in remand as time served. You had to be remanded in custody considering the nature and seriousness of the allegation against you. You also attracted another attempted rape and aggravated burglary case while this case of serious assault and escaping lawful custody was pending. Furthermore, you have a pending aggravated robbery case Tavua EJR 02 – 18 awaiting trial.
12. You are 21 years old. You are a farmer. You look after your uncle. You apologise for wasting time.

#### **AGGREGATE SENTENCE**

13. Both counts were committed in the course of the same transaction or founded on the same facts.
14. Pursuant to section 17 of the Sentencing and Penalties Act 2009, I will impose an aggregate sentence on you for both counts.
15. Since escape from lawful custody is the most serious of the 2 counts, I will use that as the foundation when passing your aggregate sentence.

#### **LAW**

16. You can be imprisoned up to 2 years from escaping from lawful custody.

#### **TARIFF**

17. The sentencing range is between 6 to 12 months imprisonment [ Avivashni Vandhana Naidu v State Criminal Appeal No. HAA 70 of 2016 ( 9<sup>th</sup> February 2017 ) ].

### **STARTING POINT**

18. Considering the circumstance of your case, I select a 7 month imprisonment term as a starting point.

### **AGGRAVATING FEATURE**

19. You were taken to hospital for your benefit pursuant to a court order. You breached the court's trust and that of the police who were in charge of escorting you.
20. You tapped the police officer's hand away in your escape.
21. You were on the run for 1 day.
22. Your sentence is increased to 13 months imprisonment.

### **MITIGATION**

23. You are a first offender.
24. You are young.
25. You cooperated with police in your interview.
26. I reduce your sentence to 10 months imprisonment.

### **GUILTY PLEA**

27. I accept that your guilty plea is early and I will reduce your sentence to 6 months and 14 days imprisonment.

### **SUSPENSION**

28. I can suspend your imprisonment term either in whole or in part pursuant to section 26 (1) and (2) (b) of the **Sentencing and Penalties Act 2009**.

29. I also take into account the factors outlined in section 4 of the **Sentencing and Penalties Act 2009** when deciding whether or not to suspend your sentence.
30. Your sentence will be aimed at deterrence and to punish you adequately.

**SUMMARY**

31. You will receive an aggregate sentence.
32. You are sentenced to an aggregate 6 months and 14 days imprisonment.
33. As I have explained, no time in remand will be deducted.
34. I refuse to suspend your imprisonment term either in part or in whole. This will be in line with the objective of deterrence despite you being a first young offender.
35. You will serve 6 months and 14 days imprisonment immediately.
36. 28 days to appeal.



  
.....  
Lisiate T.V. Fotofili  
**Resident Magistrate**

Dated at TAVUA this 2<sup>nd</sup> day of June, 2020