



**IN THE DISTRICT COURT OF NAURU**  
**CRIMINAL JURISDICTION**

Criminal Case No. 8 of 20

**THE REPUBLIC**

-v-

**JONATHAN GADEANANG**

**SENTENCE**

*Prosecutor:* Ms. Susan Serukai/DPP  
*Defence:* Mr. Vinci Clodumar with Joshua Scotty  
*Judgment:* 27 April 2021  
*Sentencing Submission*  
*Completed:* 3<sup>rd</sup> May 2021  
*Sentence:* 4<sup>th</sup> May 2021

**Catchwords:**

*Sentence— Theft contrary to section 154 of the Crimes Act.*

*Sentence--Obstructing a public official contrary to section 242 of the Crimes Act 2016;*

*Sentence-- Escape from custody contrary to section 229 of the Crimes Act 2016.*

*Totality principle applied*

**Introduction**

1. The accused was found guilty after a trial of the following charges:-
  - a. Theft: contrary to section 154 of the Crimes Act 2016;
  - b. Obstructing a public official: contrary to section 242 of the CA; and
  - c. Escaping from custody: contrary to section 229 of the Crimes Act 2016.
2. He was found not guilty of one count of damaging property.

**Facts**

3. On 17<sup>th</sup> February 2020, the accused was seen on a motorbike coming down from Robert Oberta's driveway in Ijuw at about 7:30 p.m. with one Dougal as his passenger. Dougal was carrying a pig in his arms. They were seen by Janboy Tagamoun who recognized the pig as belonging to his uncle Robert Oberta. Janboy reported the matter to his uncle who went to check his pigs and found one missing with blood on the ground near the pen. He had fed the pigs at about 6:00 p.m. and he found one missing at about 8:00 p.m. The pig was valued at \$1,000. On these facts, I found the accused guilty of count 2 for theft.
4. On 25<sup>th</sup> February 2020, Senior Constable Marvin Tokaibure went with several police officers to the accused's residence with a warrant for his arrest. He told the accused that they were there to arrest him on a warrant for stealing a pig. The accused told the police

officers he will come to the station on his own and refused to go with them. He then released two large pit bull dogs from where they were secured but held on to the leashes, forcing the officers to retreat to the police vehicle they had come in. It also prevented them from arresting the accused. Senior Constable Tokaibure said they had to use their batons to protect themselves if the dogs became aggressive. The accused released his dogs from their leashes when the officers were close to their vehicle. The police officers then got into their vehicle and returned to the station to make preparations to neutralize the dogs and arrest the accused.

5. The Police officers were on duty at the time and were authorized by an arrest warrant to arrest the accused. On these facts, I found the accused guilty of one count of obstructing a public official contrary to section 242 of the Crimes Act 2016.
6. On 25<sup>th</sup> February 2020, the accused was taken to the Police Station by his mother. He surrendered and was put in a cell. He escaped from the cell and was seen running away towards the Dental facility outside the police station. He was chased and recaptured by two police officers and on these facts, I found him guilty of one count of escaping from custody contrary to section 229 of the Crimes Act 2016.

### Seriousness

7. The starting point in the sentencing process is to look at the objective seriousness of the offending. This requires an assessment of the culpability of the accused and the harm caused, intended or likely to be caused. The culpability starts with negligence at the bottom, followed by recklessness then knowledge and with intentional acts at the top of the scale. The harm is defined in section 8 of the Crimes Act 2016 as including both physical and mental harm. The combination of the culpability and harm for a particular offending will determine the seriousness of the offending and the starting point of the sentence.
8. The aggravating factors increase the culpability of the offender and mitigating factors reduce culpability.

### Personal Circumstances

9. The accused is 29 years old. He is married and has 6 children ranging in ages from 9 months to 10 years old. He works as a security officer at Nauru College.

### Mitigation

10. The accused did not offer any remorse for his actions. He did not offer any compensation to the victim and he did not co-operate with police. The only mitigating factor is that he is a first offender.

### Submissions

11. Defence counsel has asked the Court to take account of the accused's family situation and award a non-custodial sentence.
12. Thomas J of the Queensland Court of Appeal had this to say of family hardship in R v Tilley<sup>1</sup>:

*An offender cannot shield himself under the hardship he or she creates for others, and courts must not shirk their duty by giving undue weight to personal or sentimental factors. The*

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<sup>1</sup> (1991) 53 A Crim R 1

*public, which includes many people who struggle to bring up their children with moral standards, would be poorly served if the courts give in to the temptation.*

13. In *R v Lux*<sup>2</sup> Roden J had this to say of family hardships:

*It is unfortunate in the extreme when people with heavy family responsibilities put the welfare of those who depend upon them at risk by involving themselves in criminal conduct which has the potential to produce prison sentences. When that natural consequence flows, in my view it is inappropriate to seek to put the burden—and almost indeed to put the blame—on the courts.*

*The comment has often been made that despite that sympathy and compassion to which I have referred, the courts cannot, by their sentencing decisions, create a class of people who are immune from the normal consequences of their criminal conduct.*

### **Theft.**

14. The maximum sentence for this offence as charged is 5 years imprisonment. This was an intentional act. It was brazenly carried out at a time when many people could have seen them and there was no attempt to hide the pig. This is the act of someone who has no fear of being caught and therefore no respect for the law. The harm is the loss of the pig valued at about \$1,000 for the owner. I would rate the seriousness of this offending at about the midpoint.
15. The aggravating factors for the theft are:-
- a. that involved some planning; and
  - b. It involved some organization to get Dougal to carry the pig on the motorbike.
16. In passing, I do not understand why Dougal was not charged with the accused either as a principal or as an acquaintance.
17. The DPP referred to *R v Olsson*<sup>3</sup> where this court awarded a sentence of 6 months imprisonment for theft. In that case however, Olsson was a young offender who offended at 18, cooperated with police and pleaded guilty at the first opportunity. His sentence was reduced by a third for the plea of guilty and discounts were given for the other mitigating factors. The theft was committed with a burglary and the head sentence was 14 months for the burglary. There are not sufficient sentences for theft under the Crimes Act to establish a tariff for this offence.
18. From my assessment of the seriousness of this offending, I would pick a starting point of 18 months imprisonment. For the aggravating factors I would increase the sentence by 4 months. For the single mitigating factor, I would reduce the sentence by 2 months leaving a notional sentence of 20 months imprisonment.

### **Obstructing a public official**

19. The maximum sentence for this offence is 2 years imprisonment.
20. This was an intentional act and a dangerous one. It reflects a deliberate show of disrespect for the law and the orders of the court. The harm is to the community for it lowers the respect for the police and the orders of the court. Those who carry out their

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<sup>2</sup>(Unreported, NSW CCA, 26 August 1988) quoted in *Ross on Crime*, 6<sup>th</sup> Ed, Mirko Bagaric, Thompson Reuters para 19.2225 at p. 1379-80

<sup>3</sup> NRDC Crim Case No. 74 of 2018

duties to keep law and order and execute warrants issued by the court should be respected and protected by the members of the community. I would rate the seriousness of this offending at above the midpoint for this offence.

21. The aggravating factor for this offence is that the accused released his dangerous pit bulls to intimidate and coerce the police into leaving his compound. The only mitigating factor is that he is a first offender.
22. I would pick a starting point of 12 months for this offending. For the aggravating factor, I would add 4 months and I would take away 2 months for the mitigating factor, leaving a notional sentence of 14 months imprisonment.

### Escape from custody

23. The maximum sentence for this offence is 5 years imprisonment.
24. This was an intentional act. The harm is to the community for the loss of respect for the police. A person who is in lawful custody must remain in custody and avail himself of the built in mechanisms to get out legally. I would rate the seriousness of this offending at the midpoint.
25. The aggravating factor is that the accused had to be physically manhandled back to the cell. The mitigating factor is that he was a first offender.
26. I would pick a starting point of 14 months imprisonment based on the assessment of the seriousness. For the aggravating factor, I would add 2 months and for the mitigating factors I would reduce the sentence by 2 months, leaving a notional sentence of 14 months.

### The Total Sentence

27. These offences took place separately and do not form a sequence. They should therefore be served consecutively, leaving a total notional sentence of 4 years imprisonment.
28. The totality principle requires the court to "*stand back and look at the overall picture and decide whether the total of what would otherwise be the appropriate sentence is fair and reasonable total sentence to impose: R v Creed (1985)*".<sup>4</sup>
29. I find that the total notional sentence is not appropriate and reasonable and would order that the sentences for obstructing a public official should be served concurrent to the sentence for escape from custody since they involve the same arrest on the same day. The total notional sentence is therefore 34 months imprisonment.

### Orders

30. The accused is sentenced as follows:
  - a. Theft—20 months imprisonment;
  - b. Escape from custody—14 months imprisonment to be served consecutive to the sentence for theft; and
  - c. Obstructing a public official—14 months to be served concurrent with the sentence for escape from custody and consecutive to the sentence for theft.
  - d. The total sentence is therefore 34 months or 2 years and 10 months imprisonment.

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<sup>4</sup> (1985) 37 SASR 556 (Court of Crim Appeal) per King CJ

31. The accused spent a total of 21 days in remand so his sentence is to be reduced by 21 days.

32. 14 days to appeal.

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

