

IN THE HIGH COURT OF FLJI
AT LABASA
APPELLATE JURISDICTION

Criminal Appeal No: HAA 12 of 2014

BETWEEN:

SAKUSA BASA

APPELLANT

AND:

THE STATE

RESPONDENT

Counsel: Ms S. Vaniqi for the Appellant
Mr S. Vodokisolomone for the Respondent

Date of Hearing: 8 July 2014
Date of Sentence: 15 July 2014

JUDGMENT

- [1] This is an appeal against sentence only. The appellant was sentenced to 10 months imprisonment for assault causing actual bodily harm and 4 months imprisonment for escaping from lawful custody, after he pleaded guilty to the charges in the Magistrates' Court at Savusavu.
- [2] The facts of the case were that the appellant invited the victim, who was his cousin to his home and assaulted him. The appellant suspected that the victim was having an extra-marital affair with his wife. The victim received a bruised eye as a result of the assault. The appellant was arrested and charged with assault.
- [3] When the appellant was arraigned in the Magistrates' Court, he pleaded guilty to the charge. The learned Magistrate ordered the appellant to be remanded in custody for a day because the prosecution apparently did not have their file with them. Instead of

surrendering himself, the appellant left the court house but was later arrested on the same day and remanded in custody. He was charged with escaping and when he appeared in court with the additional charge, he pleaded guilty to that charge as well.

[4] The grounds of appeal against sentence are:

- (i) That the Magistrate erred in law by starting sentence at the high end of the tariff scale beginning at 12 months;
- (ii) That the Magistrates (sic) failed to take into account there was no weapon used and the degree of provocation leading up to the commission of the offence;
- (iii) That the Magistrates (sic) erred in not giving a one third discount for early guilty plea;
- (iv) That the Magistrate miscalculated the one third discount, which should amount to 3 (sic) months, not 2 months;
- (v) That the Magistrate failed to take into account the time served in remand of 2 weeks.

Error in starting point

- [5] The appellant contends that the learned Magistrate made an error in principle by picking up a starting point outside the higher end of the established tariff for assault causing actual bodily harm.
- [6] The tariff for assault causing actual bodily harm is from a suspended sentence where there is a degree of provocation and no weapon used, to 9 months imprisonment where a weapon is used or a more serious injury is caused to the victim (*Jonetani Sereka v the State*, unreported Cr. App. No. HAA027 of 2008 (25 April 2008)).
- [7] After citing the correct tariff for assault causing actual bodily harm, the learned Magistrate picked 12 months as his starting point, added 3 months for the aggravating

factors, and deducted 2 months for the guilty plea and 3 months for other mitigating factors. The learned Magistrate arrived at a sentence of 10 months imprisonment for assault causing actual bodily harm. This sentence was used as a head sentence. The sentence for escaping was made concurrent. In effect the total sentence was 10 months imprisonment.

- [8] Tariffs are established for an offence to bring uniformity in sentencing. Tariffs are not intended to fetter the sentencing discretion of the court. A court can sentence an offender outside the tariff but the decision to impose a term outside the established tariff must be justified by the facts of the particular case (*Tuibua v State*, unreported, Criminal Appeal No. AAU0116 of 2007)
- [9] In the present case, the learned Magistrate gave no reason for picking a starting point outside the tariff for assault causing actual bodily harm and he gave no reason why he imposed a sentence outside the range. The dispute between the appellant and the victim was private in nature. The appellant invited the victim to his home. The victim was an adult man. The appellant confronted him on whether he was having an affair with his wife. In the course of that confrontation, the appellant punched the victim in his face. No weapon was used and the reason the appellant punched the victim was because he was provoked. The facts clearly justified a starting point on the lower end of the established tariff for assault causing actual bodily harm. By using a starting point outside the higher end of the established tariff, the learned Magistrate made an error in his sentencing discretion. Grounds 1 and 2 succeed.

Guilty plea

- [10] The appellant submits that the learned Magistrate erred in not according him a one third discount for his guilty plea. The total discount given for the guilty plea was 2 months. The appellant says that a one third of 12 months is 4 months, and therefore the discount for the guilty plea should have been 4 months and not 2 months. There is no hard and fast rule that a one third discount has to be given in every case where there is an early guilty plea. However, as a matter of practice, the courts do give a generous discount of a one third for an early guilty plea because the early guilty plea may indicate that the offender is genuinely remorseful for his conduct. In this case, the appellant entered an early guilty plea and expressed genuine remorse. He was entitled to a considerable

discount in sentence for his early guilty plea and a one third discount would have fairly reflected that fact. Grounds 3 and 4 succeed.

Remand period

- [11] It is clear from the sentencing remarks that the learned Magistrate failed to take into account that the appellant was in custody on remand for two weeks before sentencing. The failure to reduce the sentence to reflect the remand period is an error. This ground succeeds.

Excessive sentence

- [12] The appellant contends that an excessive sentence was imposed as a result of the sentencing errors under grounds 1 to 5. I accept this contention. Ten months imprisonment for assault where the complainant sustained minor injuries is excessive in all circumstances of this case. This ground succeeds.

Result

- [13] The appeal against sentence is allowed and a sentence of 4 months imprisonment is substituted for assault causing actual bodily harm to be served concurrently with the sentence of 4 months imprisonment for escaping from lawful custody.
- [14] The total effective sentence is 4 months imprisonment. Escaping from lawful custody is a serious offence. Suspension is inappropriate.
- [15] The appeal is allowed.


Daniel Goundar
JUDGE



At Labasa
15 July 2014

Solicitors:

Office of the Vanigi Lawyers, Suva for the Appellant
Office of the Director of Public Prosecutions, Labasa for State