

IN THE HIGH COURT OF FIJI
AT LAUTOKA
CRIMINAL JURISDICTION

Criminal Case No.: HAC 158 of 2020

STATE

V

- 1. VILIAME RAITUKU**
- 2. PETERO RUPENI TILAKORO**
- 3. NAIBUKA TAVASESE**
- 4. S. B. R. [Juvenile]**

Counsel : Mr. A. Kumar for the State.
: Ms. A. Bilivalu for the Accused.
: Ms. J. Singh for the Juvenile.

Date of Submissions : 23 February, 2021
Date of Sentence/Punishment : 23 February, 2021

SENTENCE/PUNISHMENT

(The name of the juvenile is suppressed he will be referred to as "S.B.R")

1. The three accused persons and the juvenile are charged for the offences of aggravated burglary, theft and failure to comply with orders.
2. On 2nd December, 2020 all the accused persons and the juvenile pleaded not guilty to the first count of aggravated burglary and the second count of theft. However, all the accused persons and the juvenile pleaded guilty to the third count of failure to comply with orders. The consolidated information filed by

the Director of Public Prosecutions dated 5th November, 2020 in respect of the third count to which all the accused persons and the juvenile pleaded guilty is as follows:

THIRD COUNT

Statement of Offence

FAILURE TO COMPLY WITH ORDERS: Contrary to section 69 (1) (c) and 3 (c) of the Public Health Act 1935 and section 2 of the Public Health (Infectious Diseases) Regulation 2020.

Particulars of Offence

VILIAME RAITUKU, PETERO RUPENI TILAKORO, NAIBUKA TAVASESE and S. B. R, between the 23rd day of September, 2020 and the 24th day of September, 2020 at Nukuloa, Ba in the Western Division, without lawful excuse, failed to comply with an order of the Permanent Secretary for Health and Medical Services namely by breaching the curfew hours which was set in place for the protection of public health.

3. On 25th January, 2021 all the accused persons and the juvenile admitted the summary of facts read by the state counsel in the presence of their counsel.
4. The summary of facts is as follows:

On 23rd September, 2020 the three accused persons and the juvenile were outside the complainant's shop after 11pm which was within the curfew hours in a public place.

All the accused persons and the juvenile breached the order of the Permanent Secretary for Health and Medical Services which was in place for the protection of public health.

Upon investigation by the police all the accused persons and the juvenile were arrested and they admitted committing the offence of failure to comply with orders in their respective caution interviews.

5. After considering the summary of facts read by the state counsel which was admitted by the three accused persons and the juvenile in the presence of their counsel and upon reading their caution interviews, this court is satisfied that all the accused persons and the juvenile have entered an unequivocal plea of guilty on their own freewill.
6. This court is also satisfied that the accused persons and the juvenile have fully understood the nature of the charges and the consequences of pleading guilty. The summary of facts admitted satisfies all the elements of the offence of failure to comply with orders.
7. In view of the above, this court finds the accused persons guilty and they are convicted as charged. In respect of the juvenile this court finds him guilty as charged.
8. Both counsel filed sentence and mitigation for which this court is grateful.
9. The learned counsel for all the accused persons and the juvenile presented the following personal details and mitigation:

VILIAME RAITUKU - Accused One

- a) He is 19 years of age and a first offender;
- b) Never married;
- c) Sugar Cane Labourer;
- d) Earns \$150.00 per fortnight;
- e) Also supported financially by his parents;
- f) Early guilty plea, genuinely remorseful and cooperated with the police.

PETERO R. TILAKORO - Accused Two

- a) He is 32 years of age and a first offender;
- b) Married with two children;
- c) Sugar Cane Labourer;
- d) Earns \$150.00 per fortnight;
- e) Sole bread winner of the family;
- f) Early guilty plea, genuinely remorseful and cooperated with the police.

NAIBUKA TAVASESE - Accused Three

- a) He is 38 years of age;
- b) Married with 5 children all below 18 years;
- c) Sugar Cane labourer;
- d) Earns \$150.00 per fortnight;
- e) Is also a caretaker of another farm, he earns \$1,500.00 every 6 months;
- f) Maintains his elderly father;
- g) Early guilty plea, genuinely remorseful and cooperated with the police.

S. B .R - Juvenile

- a) The juvenile is 16 years of age;
- b) School dropout;
- c) He lives with his parents and siblings;
- d) His mother is the one who is earning, she earns \$100.00 per week;
- e) He is a rugby player who plays for a club;
- f) He is genuinely remorseful, seeks the forgiveness of the court;
- g) Cooperated with the police;
- h) Pleaded guilty at the earliest opportunity;
- i) Does casual work and earns about \$25.00 per week;
- j) Promises not to reoffend.

REASONS FOR THE OFFENDING

- 10 The juvenile through his counsel states that it was peer group influence that led to the commission of the offence.

TARIFF

11. The maximum penalty for the offence of failure to comply with orders contrary to section 69 (3) of the Public Health Act 1935 and Regulation 2 of Public Health (Infectious Diseases) Regulation 2020 is a fine not exceeding \$10,000.00 or imprisonment for a term not exceeding 5 years or both.
12. There is no tariff for this offence, however, the current sentencing by the courts in Fiji is a suspended sentence and a fine.

AGGRAVATING FACTORS

13. The following aggravating factors are obvious:
 - a) Planning
There is a degree of planning involved they knew what they were doing was wrong but they did not pay any heed to the consequences. They were bold and undeterred.
14. This court takes cognizance of the limitation that exists under the Juveniles Act when it comes to punishment of a juvenile.

FINANCIAL MEANS

VILIAME RAITUKU - Accused One

- a) Accused earns \$150.00 per fortnight;

- b) Financial support from the parents;
- c) Father earns \$80 to \$100 per week also additional income from cattle farming;
- d) Mother earns \$80.00 to \$100.00 per week;
- e) Social welfare assistance is also received by the family.

PETERO R. TILAKORO - Accused Two

- a) Earns \$150.00 per week.

NAIBUKA TAVASESE - Accused Three

- a) Earns 150.00 per week;
- b) Receives additional income \$1,500.00 every six months.

S. B. R. - Juvenile

- a) Earns \$25 per week;
- b) Mother supports the juvenile financially and earns \$100.00 per week.

15. Considering the objective seriousness of the offence committed I take 15 months imprisonment as the starting point of the sentence/punishment for all the accused persons and the juvenile. I add 6 months for the aggravating factor bringing the interim total 21 months imprisonment. For the good character (first offending) and other mitigating factors the sentence/punishment is reduced by 6 months. The interim sentence/punishment now stands at 15 months imprisonment. The accused persons and the juvenile have pleaded guilty and shown genuine remorse hence the sentence/punishment is further reduced by 5 months the sentence is now 10 months imprisonment.
16. I note from the court file that the accused persons have been remand for 4 months and 27 days in accordance with section 24 of the Sentencing and Penalties Act I further reduce the sentence as a period of imprisonment

already served. The final sentence of imprisonment for all the accused persons is 5 months and 3 days.

17. I note from the court file that the juvenile has been in detention for 12 days in accordance with section 24 of the Sentencing and Penalties Act I further reduce the punishment as a period of punishment already served. The final punishment for the juvenile is 9 months and 18 days.
18. Under section 26 (2) (a) of the Sentencing and Penalties Act this court has discretion to suspend the final sentence/punishment since it does not exceed 3 years imprisonment.
19. The following relevant special circumstances or special reasons for the suspension of the imprisonment term in my view needs to be weighed in choosing an immediate imprisonment or a suspended sentence/punishment.
20. The accused persons and the juvenile are young offenders and persons of a good character, an isolated offence was committed by them, they pleaded guilty at the earliest opportunity, are genuinely remorseful, and cooperated with police. These special reasons render immediate imprisonment inappropriate.
21. In summary the accused persons are sentenced to 5 months and 3 days imprisonment respectively for one count of failure to comply with orders which is suspended for 18 months. The effect of suspended sentence is explained to all the accused persons.
22. In addition to this, taking into consideration the financial means and capability of all the accused persons this court orders the first accused to pay a fine of \$100.00 payable in 30 days from today in default 30 days imprisonment, the second accused to pay a fine of \$100.00 payable in 30 days from today in default 30 days imprisonment, the third accused to pay a

fine of \$150.00 payable in 30 days from today in default 30 days imprisonment.

23. In summary the juvenile is given a punishment of 9 months and 18 days imprisonment for one count of failure to comply with orders which is suspended for 18 months. The effect of suspended punishment is explained to the juvenile.
24. The parents of the juvenile are to sign a good behaviour bond on behalf of the juvenile in the sum of \$100.00 each, upon considering the financial means and capability of the parents this court orders the parents to pay a fine of \$100.00 within 60 days from today at the Magistrate's Court, Ba.
25. 30 days to appeal to the Court of Appeal.



Sunil Sharma
**Sunil Sharma
Judge**

At Lautoka

23 February, 2021

Solicitors

Office of the Director of Public Prosecutions for the State.

Office of the Legal Aid Commission for all the Accused and the Juvenile.