

IN THE HIGH COURT OF FIJI
AT SUVA
CRIMINAL JURISDICTION

Crim. Case No: HAC 182 of 2022

STATE

vs.

AMINIO ATANINANO TANIORIA

Counsel: Ms. P. Mishra for the State
Mr. J. Biaukula for Accused

Date of Hearing: 11th -13th April 2023
Date of Closing Submission: 14th April 2023, 18th April 2023
Date of Judgment: 27th April 2023
Date of Sentence/Mitigation Submission: 1st and 2nd May 2023
Date of Sentence Ruling: 4th May 2023

SENTENCE

Introduction

1. Mr. Aminio Ataninano Tanioria, you were found guilty and convicted on the 27th of April 2023 of Unlawful Wounding contrary to Section 261 of the Crimes Act, 2009 by this Court after trial. Written submissions on sentencing and mitigation were tendered. Accordingly you appear today to be sentenced for the said offence.

Circumstances of the Offending

2. If I may briefly narrate the events that led to this offending; on the 24th day of August 2019 at around 4.15am, the Accused was leaving a nightclub in the Suva City and was walking to the bus stand. Two persons then snatched his mobile phone and the Accused

then gets hold of one of them and assaults him. That happens to be the victim Rupeni Mateyawa. No doubt, it was a merciless attack resulting in serious harm and injury. However, the Accused himself had been a victim of a crime at that point and was reacting and was making an attempt to retrieve his lost mobile phone which he never found.

3. As confirmed by the medical evidence, the victim as a result of this assault has suffered a serious loss of memory as well as partial paralysis of one aspect of his body. It was also the opinion of the Consultant Neuro Surgeon that it was hypoxia that caused the injury to brain and it was contributed and exacerbated by the high level of alcohol in the victim's metabolism. These are the brief and salient facts.

Sentencing Regime

4. The maximum penalty prescribed for Unlawful Wounding by section 261 of the Crimes Act is 5 years imprisonment. There is no tariff fixed or determined for this offence by any authoritative guideline judgement. The current practice is reflected and some guidance may be drawn from the following decisions. In **State v Namuka – Sentence [2019] FJHC 289; HAC 3.2019 (2 April 2019)** Justice Morais stated that;

“The maximum punishment prescribed for the said offence of unlawful wounding is 5 years imprisonment. In Matai v State [2018] FJHC 25; Criminal Appeal 108.2017 Ltk (26 January 2018) Justice Madigan said that the tariff for assault causing actual bodily harm where domestic violence is involved is involved is from 6 to 18 months imprisonment. Though various sentences averaging from 6-24 months are given in numerous cases, I could not find a set tariff for the offence of unlawful wounding.

5. Then in **State v Sikitora** [2010] FJHC 466, HAC 067.2010L (22 October 2010)] the court adverted to there being no precedents as regard the tariff for this offence and considered the case of **Elizabeth Joseph v State** [2004] HAA 03 of 2004 and **State v Tevita Alati** [2004] HAA 73 of 2004] and then a **tariff of 9 months to 12 months** imprisonment was considered. Then, in **Amasi Korovata v State** [2006] HAA 115 of 2006 a sentence of 18 months was upheld and affirmed for a domestic violence related unlawful wounding.
6. However, Justice Madigan in **Vutovuto v State** [2014] FJHC 929; Criminal Appeal 21.2014 (18 December 2014) did identify the tariff that prevailed to be as follows;

“The tariff for wounding (s.261) are sentences of imprisonment between 9 and 12 months, but wounding in domestic violence cases creates a tariff of 12 months to 3 years depending on the following facts:

- 1. The seriousness of the wound.*
- 2. Degree of provocation.*
- 3. Remorse.*
- 4. Dangerousness weapon used.”*

7. Considering the above decisions and other determinations it appears that the range as identified in **Vutovuto v State** [2014] FJHC 929; may be considered as tariff in respect of the offence of unlawful wounding. This refers to two categories namely, domestic violence related wounding and other unlawful wounding that is *of 12 months to 3 years, for wounding in domestic violence cases and between 9 and 12 months* in respect of the others. In the current context and for the reasons stated above, it is now necessary for the purposes of this case to have a third category namely wounding by street revelers, night clubbers and nightspot participants with a higher range than the general category of 9 to 12 months referred to in **Vutovuto v State**. It appears to be reasonable to consider a range of 12 to 24 months for unlawful wounding by street revelers, night clubbers and nightspot participants as in the present case, depending on the same factors as that for domestic violence wounding, namely;

- 1. The seriousness of the wound;*
- 2. Degree of provocation*
- 3. Remorse;*
- 4. Dangerousness weapon used.*

8. This is a via media between the said two categories and also within the overall range of *9 months to 3 years* as identified in **Vutovuto v State**.

Objective Seriousness

9. Unlawful wounding seems to be prevalent and appears to have reached alarming proportions in Fiji, especially in and around night clubs in the recent past, involving intoxicated persons. This has now become a serious social issue and matter of concern of the authorities. The legislature has provided a sentence of 5 years for this offence. Therefore, objectively viewed, this offending is clearly serious.

Victim Impact Report

10. According to the Victim Impact Statement which the father of the victim has prepared it appears that Rupeni cannot now live a normal life due to the inability to walk

properly and that it will take some years for him to improve to some extent. He also suffers from the loss of memory. Further, Rupeni cannot survive on his own and needs the support even to attend to his personal matters such as using the toilet and having a shower. He requires to be looked after by someone and his father and sister are now looking after him. Mr. Rupeni has also lost his income. This impact will be considered in determining the sentence.

Mitigating and Aggravating Factors

11. The mitigating factors are as follows:

- (i). You are now around 42 years of age and is in a *de facto* relationship. Unfortunately, these are all personal circumstances and cannot be considered as mitigating circumstances;
- (ii). You cooperated with the police and also admitted the assault during this trial. This demonstrated some form of remorse on your part;
- (iii). There was no pre meditation and it was on the spur of the moment,
- (iv). As per your Antecedent Report, there are no previous convictions and thus, this Court considers you as a person of previous good character.

12. Aggravating circumstances are as follows:

- (i) You have used extreme force and the injuries caused are serious;
- (ii) You have virtually taken the law in your hands.
- (iii) You caused great misery to the victim and his family which is long lasting,

Sentence

13. The least possible sentences I can impose, having regard to the aggravating and mitigating factors of the case is thus: Considering the objective seriousness of his offending I pick a sentence of 18 months imprisonment as the starting point. Then I add 12 months for the aggravating factors, making a total of 30 months imprisonment. For the aforesaid mitigating factors I am inclined to deduct 6 months, leaving a balance of 24 months imprisonment.

14. Having considered section 4 (1) of the Sentencing and Penalties Act and the serious nature of the offence committed on the victim the purpose of this sentence is to punish

you in a manner that is just in all the circumstances, protect the community, deter like-minded offenders and to clearly manifest that the court and the community denounce what you did to the complainant.

15. Accordingly, I sentence you to twenty four (24) months imprisonment for the offence of unlawful wounding for which you stand convicted.

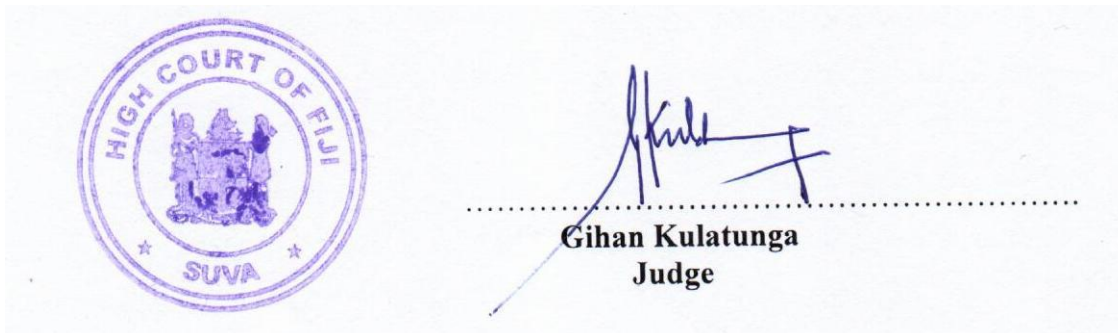
Suspending the Sentence

16. 1st Accused's Counsel submitted that this is a fit matter for this Court to consider acting under section 26 (2) of the Sentencing and Penalties Act, especially as you are a first offender and that you will rehabilitate and reform and you will lead a good life and contribute to the society, and that these are sufficient grounds to consider suspending your sentence in terms of the provisions of section 26 (1) of the Sentencing and Penalties Act.
17. As per Section 26 (2) of the Sentencing and Penalties Act, the discretion to suspend a sentence should only be exercised by a High Court where the custodial sentence does not exceed 3 years and as opined in the Sentence Ruling in **State v Aiding Zhang** [2017] HAC 061 if there be circumstance which are exceptional.
18. In **DPP v Jolame Pita** (1974) 20 FLR 5 at p.7:, Grant Acting CJ (as he was then) explained what special circumstances that warrant and justify the suspension of a sentence thus;

"Once a court has reached the decision that a sentence of imprisonment is warranted there must be special circumstances to justify a suspension, such as an offender of comparatively good character who is not considered suitable for, or in need of probation, and who commits a relatively isolated offence of a moderately serious nature, but not involving violence. Or there may be other cogent reasons such as the extreme youth or age of the offender, or the circumstances of the offence as, for example, the misappropriation of a modest sum not involving a breach of trust, or the commission of some other isolated offence of dishonesty particularly where the offender has not undergone a previous sentence of imprisonment in the relevant past. These examples are not to be taken as either inclusive or exclusive, as sentence depends in each case on the particular circumstances of the offence and the offender, but they are intended to

illustrate that, to justify the suspension of a sentence of imprisonment, there must be factors rendering immediate imprisonment inappropriate."

19. No doubt, the harm caused is serious and may be disproportionate. However, the Accused himself was a victim of theft/robbery at that moment who was attempting to retrieve his lost phone. This was a spur of the moment act to protect his property and also person though not proportionate. Considering the said circumstance in which the Accused happen to assault the victim in conjunction with him being a first-time offender with no other pending matters, I am of view that this is a fit case to suspend the sentence of the Accused as the final sentence does not exceed 3 years.
20. Thus, upon duly considering the material before me, especially the exceptional circumstances and previous good character I will suspend the (24 months) 2 year term of imprisonment for a period of 7 years.
21. The nature, effect and consequences of violating the order of suspension is explained to the Accused.
22. You have thirty (30) days to appeal to the Fiji Court of Appeal if you so desire.



At Suva

4th May 2023

Solicitors

Office of the Director of Public Prosecutions for the State.
Legal Aid Commission for the Accused