

was suspended for three years and disqualified his driving licence for a period of two years. Aggrieved with the sentence, the Appellant appealed to this Court on the following grounds.


Appeal Against Sentence

- a) **THE** Learned Magistrate erred in law when she sentence your Petitioner to 1 year imprisonment suspended for 3 years which is harsh and excessive.
- b) **THAT** the compulsory disqualification of driving license for 2 years imposed by the Learned Magistrate was manifestly excessive and harsh and wrong in principal having regards to all the circumstances of the case.
- c) **THE** Learned Magistrate erred in law when she did not consider an adequate discount on the guilty plea.
- d) **THE** Learned Magistrate erred in law by failing to give sufficient weight to the mitigating factors and aggravating factors in determining your Petitioner's sentencing.
- e) **THAT** the Learned Magistrate erred in law by failing to consider sentences issued in precedents related to the charges.
- f) **THE** Learned Magistrate erred in law when as she failed to give proper reasoning as to your Petitioner's sentencing.
- g) **THE** Learned Magistrate erred in law when sentencing your Petitioner by failing to take into account and/or consider the Sentencing Guidelines and the General Sentencing Provisions in the Sentencing and Penalties Decree 2009.

3. Considering all grounds of Appeal, the Appellant's main contention is that the final sentence is harsh and excessive, especially the duration of the disqualification period as it affects his livelihood.
4. The maximum sentence for Dangerous Driving is a \$1000 fine/12 months' imprisonment and disqualification for six months if it is the first offence. The maximum penalty for the first count is a \$2000 fine/2 years' imprisonment and mandatory disqualification from 3 months to 2 years if it is the first offence.
5. The Appellant had not stopped his vehicle after he collided with the other truck. The Police followed and arrested him, where the Police found that the Appellant was under the influence of alcohol. The Appellant was a first offender. Considering this factual background and the sentencing practices, an aggregate sentence of one year imprisonment suspended for three years is neither harsh nor excessive. However, the two years of disqualification is disproportionate to the crime and the circumstances of the Appellant.
6. In consequence of the reasons stated above, I find this to be an appropriate case for this Court to intervene under Section 256 of the Criminal Procedure Act with respect to the period of disqualification imposed by the learned Magistrate. Considering the above-discussed reasons, I find a disqualification period of six months would be the appropriate sentence for this matter.
7. I accordingly make the following orders:
 - i) The Appeal is allowed,
 - ii) The sentence dated 31st of July 2023 imposing one-year imprisonment suspended for three years is upheld, but the two-year disqualification period is set aside and replaced with an order disqualifying the Appellant from driving for a period of six months, effective from 31st of July 2023.

8. Thirty (30) days to appeal to the Fiji Court of Appeal.




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Hon. Mr. Justice R. D. R. T. Rajasinghe

At Suva

23rd February 2024

Solicitors.

Shelvin Singh Lawyers for Appellant.

Office of the Director of Public Prosecutions for the Respondent.