

**IN THE MAGISTRATES' COURT OF FIJI
AT TAVUA
CRIMINAL JURISDICTION**

Traffic Criminal Case No: 08 - 2019

STATE

-v-

JIUTA SIVO

Before : RM Fotofili L.
For Prosecution : WPC Chand A. [Police Prosecution]
Accused : Ms. Henao G. Legal Aid Commission]
Date of Sentence: 30th July 2019

SENTENCE

1. **JIUTA SIVO**, you have pleading guilty to the following charge:

Statement of Offence

Driving Motor Vehicle Whilst There Is Present in the Blood a Concentration of Alcohol In Breath of Zero Alcohol: Contrary to section 105 (1) (a) and 114 of Land Transport Breathe Test and Analysis Regulation 2000.

Particulars of Offence

JIUTA SIVO, on the 4th day of January, 2019 at Tavua in the Western Division, drove a motor vehicle registration number FY 379 at Tabavu Street, Tavua town whilst there was present in your breath 39 micrograms of alcohol which is equivalent to 85.8 milligrams of alcohol which was in excess of zero limit.

2. I am satisfied that your guilty plea and your admission in court is voluntary and that you understand the consequences of your plea. The evidence tendered in support of your plea supports your position.
3. I have found you guilty and I convict you accordingly of the charge.

SENTENCING RANGE or SENTENCING TARIFF

14. The courts have not set any sentencing preference or tariff for this type of offence and so the final sentence in each case will be determined by the circumstance of each case.

Starting Point

15. In your case, I select a starting point of 2 months imprisonment.

Aggravating Factor

16. You exceeded the prescribed zero limit by approximately 86 milligrams.
17. Your sentence is increased to 3 months imprisonment.

Mitigating Factors

18. You have no previous conviction.
19. You will receive some reduction for cooperating with the police when they questioned you.
20. You have a family to look after.
21. Your sentence is reduced to 1 month and 14 days imprisonment.

Guilty Plea

22. You have pleaded guilty early.
23. Your sentence is reduced to a 1 month imprisonment term.

Suspended Term , Disqualification and Non-conviction

24. I can suspend your sentence whether in whole or in part pursuant to section 26 (1) and (2) (b) of the **Sentencing and Penalties Act 2009**, if your sentence is below 2 years imprisonment.
25. The length of time a person can be disqualified from driving can be determined by assessing the standard of driving shown, any previous traffic violations, the need to protect the public from dangerous or drunk drivers, good character of the defendant and whether there is any serious hardship to the family and whether driving is a source of income [**State v Joel Sahai** Case No. HAAR 002 of 2017 (29th August 2017)].
26. The circumstance of your case, your circumstance, the offence, the reason given seeking a non-conviction does not persuade me to order a non-conviction in your favour. A conviction will remain against you.
27. Your sentence is aimed at deterrence and is to punish you adequately.

SUMMARY

28. Your final sentence is this:

It is 1 month imprisonment.

There will be no further reduction in sentence as you did not spend any time in remand.

I will wholly suspend your 1 month imprisonment term.

Your 1 month imprisonment term is suspended for the next 1 year.

Do not commit any other offence punishable with imprisonment in the next 1 year. If you do, this 1 month imprisonment term held in waiting maybe activated.

You are fined \$200 to be paid in 28 days. In default, you risk up to 10 days imprisonment.

You are disqualified from driving for 3 months effective from today.

[surrender your license]

29. 28 days to appeal.



Dated at TAVUA this 30th day of July, 2019.

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Lisiata T.V. Fotofili

Resident Magistrate