

IN THE MAGISTRATES COURT OF FIJI
AT SUVA
CRIMINAL JURISDICTION

Criminal Case No. 763 of 2019

STATE

-v-

AMASAI KOROVATA

Appearances:

Constable S. Baleitaveuni *for the State*

Mr. J. Nasaof the Legal Aid Commission *for the Defendant*

Date of Sentence Hearing: 18 & 19 July 2019

Date of Sentence: 29 July 2019

SENTENCE

1. You entered a plea of guilty to one count of **Assault Causing Actual Bodily Harm** contrary to section 275 of the **Crimes Act 2009** in that you "on the 18th day of May 2019 at Nabua in the Central Division, assaulted **Allen Jay Navunigasau**, thereby causing him actual bodily harm."
2. The State's Summary of Facts were read out to you in open Court. You indicated that you understood and admitted the Facts. The Facts reveal that on 18/5/2019 at some point between 9.30am and 11.00am at Komave Settlement in Nabua, **Allen Jay Navunigasau** had returned home from Nabua Town when you suddenly took down a brown belt hanging on the wall and you hit him. You hit him several times. He received injuries to his arm, forehead and back. The matter was reported to the Police.
3. **Allen Jay Navunigasau** was medically examined and you were interviewed under caution. You admitted to having hit **Allen Jay Navunigasau** with a belt and to having injured him as a result. You were then processed for Court.
4. **Allen Jay Navunigasau** is your son and he was 14 years old at the time in question. These are facts contained in the State's Summary of Facts and admitted by you. Moreover, the State tendered your Record of Interview and I caused that Record to be shown to you. You admitted in open Court to having given the answers contained in it and more than that, you admitted to having given your answers freely and voluntarily.
5. Finally, the State tendered **Allen Jay's** medical report. You were shown this medical report and you indicated that you accepted that the injuries noted in that report had been caused by you on the day in question.

6. I am satisfied of these facts beyond reasonable doubt. Each element of the offence is established beyond reasonable doubt. I find you guilty and I convict you of **Assault Causing Actual Bodily Harm** contrary to section 275 of the **Crimes Act 2009** as charged.

Maximum Penalty and Tariff

7. This offence attracts a maximum sentence of five (05) years imprisonment.
8. The tariff for this offence ranges from a suspended sentence to 18 months imprisonment: see **State v. Vocevoce**[2017] FJHC 15; HAA27.2016 (23 January 2017) at [31] – [32].

Aggravating Factors

9. This was a case of domestic violence. **Allen Jay Navunigasau** is your son. He was only 14 years old at the time.
10. You hit him multiple times and with a degree of force. It is clear that this was a beating. You hit him on the left side of the forehead, his right forearm and extensively bruised the left side of his back.
11. What you did was an abuse of your power and strength and authority over him.

Mitigating Factors

12. You are 54 years old. You are married and have 5 children. You are an entrepreneur and earn a decent living, I am told. You are the sole breadwinner for your family.
13. Your counsel tells me that you committed the offence out of poor judgment and were only trying to discipline your child. You now realize the seriousness of what you did and are remorseful, I am told.
14. You cooperated with the Police and you entered a guilty plea at the first available opportunity. You have apologized to your son and you seek a non-custodial term. You are a first offender.

Sentencing

15. I pick a starting point of 9 months imprisonment and I increase your sentence by 3 years for the aggravating factors apparent here. Your level of moral culpability is quite high and this was objectively a very serious incident of assault, involving as it did domestic violence upon a child that resulted in extensive bruising to that child.
16. Your sentence is now 3 years and 9 months.
17. I reduce your sentence by 6 months for your personal circumstances and I reduce your sentence by a further 6 months for the fact that you cooperated with the Police. Your sentence is now 2 years and 9 months.

18. I give you credit for the fact that you are a person of previous good character. Your sentence is reduced by 9 months for this factor. Your sentence is now imprisonment for 2 years.
19. You are entitled to a one third reduction for your early guilty plea. You entered your plea of guilty at the first available opportunity. Your sentence is reduced by 8 months for your early guilty plea. Your sentence is now imprisonment for 16 months.
20. I consider whether or not I should suspend your sentence pursuant to section 26 of the **Sentencing and Penalties Act 2009**. I decide not to. You attacked your child and you hurt him.
21. Children are gifts to be cherished and cared for, not abused and harmed. They are a particularly vulnerable category of persons. I would be remiss in my duty if I did not underscore the objective seriousness of what you did by imposing an immediate custodial term against you,
22. The imposition of an immediate custodial term within the tariff is designed to specifically deter you and generally deter others from physically assaulting and harming children.
23. In my considered view, the sooner adults appreciated that if they harmed a child in their care they might be charged with assault, and that a custodial sentence was inevitable for a deliberate assault of a child, the better.

Result

24. In the result and for the reasons set out above, you are sentenced to 16 months imprisonment.
25. To foster your rehabilitation, in light of the fact that you are a first offender, no minimum non-parole period is set.
26. I understand that you have been remanded since 25 May 2019. That is a period of sixty-six days. Pursuant to section 24 of the **Sentencing and Penalties Act 2009**, I declare the sixty six days you spent in remand, time already served.
27. The interim standard non-molestation orders imposed against you to protect **Allen Jay Navunigasa** pursuant to section 27 of the **Domestic Violence Act 2009** are made permanent. You are warned that to breach those orders is to commit a crime.
28. 28 days to appeal.

Seini K Puamau
RESIDENT MAGISTRATE



Dated at Suva this 29th day of July 2019.