

IN THE MAGISTRATES' COURT OF FIJI AT TAVUA
CRIMINAL JURISDICTION

Criminal Case No: 194 - 2018

STATE

-v-

LUKE TUI

For Prosecution: WPC Chand A. [Police Prosecution]
Accused: In person, Waived Right to Counsel
Date of Sentence: 2nd April 2019

SENTENCE

BACKGROUND

1. **LUKE TUI**, the prosecution filed a charge against you alleging that you committed four offences or four counts.
2. On the 14th of January 2019 the prosecution withdrew one of the counts and you have been discharged in relation to that.
3. That count withdrawn is count 3.
4. You have pleaded guilty to the remaining counts [amended on the 9th of July 2018] which I outline below:

Count 1

Statement of Offence

DRUNK & DISORDERLY: Contrary to section 4 of the Minor Offences Act, Cap 85.

Particulars of Offence

LUKE TUI on the 10th day of June, 2018, at Tavua in the Western Division was drunk and behaved in a disorderly manner in a public place namely Tavualevu Junction, Tavua town.

Count 2
Statement of Offence

RESISTING ARREST: Contrary to section 277 (b) of the Crimes Act No. 44 of 2009.

Particulars of Offence

LUKE TUI on the 8th day of April, 2018, at main street Tavua town in the Western Division resisted the lawful arrest of PC Voniani Asish in the due execution of his duty.

Count 4
Statement of Offence

BREACH OF BAIL CONDITION: Contrary to section 25 (1) (c) and 26 (1) of the Bail Act No. 2 of 2000.

Particulars of Offence

LUKE TUI on the 10th day of June, 2018, at Tavua town in the Western Division being bailed by the Tavua Magistrate Court vide CF 72 – 16 breached by not complying with the condition imposed by the Tavua Magistrate Court.

5. I am satisfied that your guilty plea is voluntary. Your plea too is supported by the evidence. I am also satisfied that you understand the consequence of your plea. I have found you guilty accordingly in relation to these counts.
6. The date in the particulars of count 2 is a misprint. The correct date is the 10th day of June 2018.
7. You were in Tavua town on the 10th day of June 2018 at around 1am. You were drunk. Police were on mobile patrol and you were seen shouting and swearing. You also swore at the police. In court before me you admitted that the swear you uttered was ' Magaitinamu ' or mothers vagina. You had the heavy smell of liquor on you. When police approached to arrest you, you tried to run away from them. You also spoke back to them. Even when arrested and brought to the police station, you continued shouting. At the time, you were on bail for another case with one of your bail conditions requiring that you are not to reoffend whilst on bail.

8. In your police caution interview with the police, you denied resisting arrest or shouting. You said that you were asking the police why they were arresting you. You refused to go into the police cell. You later admitted that you shouted and swore at them. You said police assaulted you. You admitted that you were breaching your bail condition by reoffending.
9. You have a previous conviction for breach of bail and you were sentenced in that case on the 30th of January 2018 to 5 month's imprisonment.
10. You have not spent any time in remand.
11. In your mitigation you seek forgiveness and you promise not to reoffend. You are farming. You are 23 years and you are single.
12. The offences or all three counts were committed in the course of the same transaction or founded on the same facts.
13. Pursuant to section 17 of the **Sentencing and Penalties Act 2009**, I will impose an aggregate or combined sentence on you for all the 3 counts.
14. Since count 2 serious assault is the most serious, I will use this as the guiding offence when sentencing you for all the counts.

LAW

15. The maximum sentence that is imposable by law for serious assault is 5 years imprisonment.

TARIFF

16. The courts sentencing preference for this offence is by imposing a 6 to 9 months imprisonment term [**Epeli Talakubu v. The State** Criminal Appeal No HAA 37 of 2016.

AGGREGATE STARTING POINT

17. Considering the circumstance of your case, I select 7 months imprisonment as a starting point.

AGGRAVATING FEATURE

18. The offence was committed in public in the early hours.
19. Your vulgar language was disgusting.
20. You were uncooperative and resistant even when you were brought to the police station.
21. You were intoxicated.
22. You were supposed to be behaving at the time as you had bail conditions to follow.
23. Your sentence is increased to 13 months imprisonment.

MITIGATION

24. Having observed and listened to you, I accept that you are remorseful.
25. You will not get any reduction in sentence for having a good history.
26. You cooperated during your questioning with but it was only in part.
27. You are young.
28. Your sentence is reduced to 9 months imprisonment.

GUILTY PLEA

29. I accept that your guilty plea is early and I will reduce your sentence to 6 months imprisonment.

SUSPENSION

30. I can suspend your imprisonment term either in whole or in part pursuant to section 26 (1) and (2) (b) of the **Sentencing and Penalties Act 2009**.

31. I also take into account the factors outlined in section 4 of the **Sentencing and Penalties Act 2009** when deciding whether or not to suspend your sentence.
32. Your sentence will be aimed at deterrence and to punish you adequately.

SENTENCE

33. You will receive a combined or aggregate sentence for the 3 counts.
34. You are sentenced to 6 months imprisonment.
35. You have not spent any time in remand and I will not make any more deductions to your sentence.
36. I am inclined to suspend 5 months imprisonment of your sentence for the next 18 months, you commit any other offence in the next 18 months and this 5 months imprisonment maybe activated.
37. You will serve 1 month imprisonment immediately.
38. 28 days to appeal.



Dated at Tavua this 2nd day of April 2019

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Lisiate T.V. Fotofili

Resident Magistrate

