

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

Traffic Criminal Case No: 60 - 2018

STATE

-v-

VINESH KUMAR

For Prosecution: WPC Chand A. [Police Prosecution]
Accused: Mr Samy A. [Legal Aid Commission]
Date of Sentence: 30th April 2019

SENTENCE

1. **VINESH KUMAR**, you have pleaded guilty to the following charge:

Statement of Offence

Driving Motor Vehicle Whilst There Was Presence in the Blood a Concentration of Alcohol In Excess Of The Prescribed Limit: Contrary to section 103 (1) (a) and 114 of Land Transport Breathe Test and Analysis Regulation 2000.

Particulars of Offence

VINESH KUMAR on the 24th day of July, 2018 at Tavua in the Western Division drove a motor vehicle registration FH.404 at Goldfield Road, Vatukoula, Tavua whilst there was present in your breath 43 micrograms of alcohol which is equivalent to 94.6 milligrams of alcohol which was in excess of the prescribed limit.

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

4. The facts you admit reveal that you drove the vehicle towards Vatakoula. You were stopped by police who were on patrol. Police smelt liquor on you when they approached you. You said that you had drunk beer with a friend. You were arrested and brought to the police station. You were tested on a breathalyser machine or dragger 7110 machine. The result was 43 microgrammes of alcohol per 100 millilitres of breath.
5. The reading on a breath analysing instrument in microgrammes of alcohol per 100 millilitres of breath is to be multiplied by 2.2 in order to arrive at the number of milligrams of alcohol in 100 millilitres of blood [section 3 (3) of the **Land Transport (Breath Tests and Analyses) Regulations 2000**].
6. The legal limit is 80 milligrams of alcohol in 100 millilitres of blood [section 3 (1) of the **Land Transport (Breath Tests and Analyses) Regulations 2000**].
7. After calculation, it is established that you had 94.6 milligrams of alcohol in 100 millilitres of your blood.
8. You exceeded the legal limit by 14.6 milligrams.
9. When you were interviewed under caution by police, you admitted drinking beer with friends. You consumed 6 bottles of beer with them. You then drove towards your home and on the way police stopped you. You admitted being drunk when driving.
10. You have no previous conviction.
11. You have not spent any time in remand.
12. You are 25 years old. You are a van driver by profession. You are single but you support your family. You promise not to reoffend. You seek leniency. You have cooperated with police and you pleaded guilty early.

MAXIMUM SENTENCE

13. For a first offence of driving a vehicle whilst there was alcohol in your breath above the prescribed limit, the law allows a court to impose a fine on you which can be up to \$2,000 and or you can be imprisoned up to 2 years and being mandatorily disqualified from driving between 3 months even up to 2 years.

SENTENCING RANGE or SENTENCING TARIFF

14. The courts have not set any sentencing preference or tariff for this offence and so the final sentence in each case will be determined by the circumstance of each case.
15. The **Sentencing and Penalties Act 2009** particularly section 4 (but not limited to) will guide me when deciding your sentence.

Starting Point

16. I select an aggregate starting point of 3 months imprisonment.

Aggravating Factor

17. I do not consider the amount of alcohol in your blood at the time to be excessive so I will not use this as a factor to increase your sentence.
18. I don't see any other aggravating factor. Even the distance you drove in your state is not lengthy.
19. Your sentence remains at 3 months imprisonment.

Mitigating Factors

20. You have no previous conviction.
21. You have a family to support.
22. You cooperated with police.
23. I accept that you are remorseful.
24. Your sentence is reduced to 1 month imprisonment.

Guilty Plea

25. You have pleaded guilty early.
26. I will reduce your sentence to 2 weeks and 5 days imprisonment.

Suspended Term and Disqualification

27. 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.
28. Your sentence is aimed at deterrence and is to punish you adequately.
29. For driving with excess alcohol in your blood, it is not optional whether you should be disqualified from driving. The law says that it is mandatory. The real question is, how long will the disqualification be?
30. 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)].

SUMMARY

31. **You are sentenced to 2 weeks and 5 days imprisonment.**

You have not spent any time in remand, so no further time will be deducted.

I am inclined to suspend your sentence wholly for the next 8 months.

Commit any other offence within the next 8 months and this 2 weeks and 5 days imprisonment term held in waiting maybe activated.

I will disqualify you from driving for 3 months.

[surrender your license]

You are fined \$160 and this is to be paid in 28 days.

Default in paying this fine and you may spend up to 10 days imprisonment.

32. 28 days to appeal.

.....

Lisiate T.V. Fotofili

Resident Magistrate

Dated at TAVUA this 30th day of April 2019