

IN THE MAGISTRATES' COURT OF FIJI AT TAVUA
CRIMINAL JURISDICTION

Criminal Case No: 125 - 2018

STATE

-v-

JOSAIA LAQARIA

For Prosecution: Inspector Lenaitasi S. [Police Prosecution]
Accused: Ms Henao G. [Legal Aid Commission]
Date of Sentence: 10th May 2019

SENTENCE

BACKGROUND

1. **JOSAIA LAQARIA**, you have pleaded guilty to the following charge:

Count 1

Statement of Offence

ASSAULT OCASSIONING ACTUAL BODILY HARM: Contrary to section 275 of the *Crimes Act of 2009*.

Particulars of Offence

JOSAIA LAQARIA on the 8th day of April, 2018 at Tavualevu Village, Tavua in the Western Division assaulted one Jope Ratu thereby causing him actual bodily harm.

Count 2

Statement of Offence

BREACH OF BAIL CONDITION: Contrary to section 25 (1) (a) and 26 (1) of the Bail Act of 2002 and the Bail Amendment Act of 2012.

Particulars of Offence

JOSAIA LAQARIA on the 8th day of April, 2018 at Tavua in the Western Division, re-offended on bail vide CF 312/17 by Tavua Magistrates Court.

2. I am satisfied that your guilty plea or admission of guilt is **voluntary and that you understand the consequence of your plea**. The evidence also **supports your guilty plea**. I have convicted and found you guilty of both counts accordingly.
3. The victim in count 1 is 12 years old. You two were inside the **sitting room**. You chased the victims' sisters and you punched the victim on the back of his head.
4. When you were arrested later and interviewed by police, you admit being at your sisters' house with her children. You were watching a movie and that is when your nephew or the victim came in. You told him to sit down. He teased you and you got upset and slapped the back of his head 2 times. In reply to the question that you had breached your bail condition in your pending case CF 312 – 17, you said that you were angry and that is the reason why you did what you did.
5. The victim was medically examined a few hours later after you had hit him. The medical officer amongst other things, observed that there was **tenderness to the back of his head**.
6. You are not a first offender. You have previous convictions dating back to 2004 for larceny. Although time elapsed since your last conviction is not the only factor, I will consider this a spent conviction and I will deal with you as a first offender.
7. You have been in remand for 13 days.
8. You are 38 years old, unmarried and you are farmer. You seek forgiveness.

AGGREGATE SENTENCE

9. The offences or both counts were committed in the course of the **same transaction** or founded on the same facts.
10. Pursuant to section 17 of the **Sentencing and Penalties Act 2009**, I will impose an aggregate sentence on you for both the counts.
11. Since assault is the more serious of the 2 counts, I will use that as a guide when passing your aggregate sentence.

LAW

12. The maximum sentence that is imposable by law for the **offence of assault** occasioning actual bodily harm is up to 5 years imprisonment.

TARIFF

13. The sentencing tariff for assault occasioning actual bodily harm ranges between a suspended sentence and for more serious cases to 9 months imprisonment depending on the degree of provocation and whether any weapon was used [see for example State v Kalouteretere - Sentence [2018] FJHC 845; HAC 270. 2018 (12 September 2018).

STARTING POINT

14. Considering the circumstance of your case, a 4 month imprisonment term is selected as a starting point.

AGGRAVATING FEATURES

15. There was a domestic relationship in existence. This was your nephew.
16. He was 12 years.
17. I accept the injuries in the medical report and your answer in your interview that you slapped him on the head twice.
18. You were supposed to be behaving in compliance with your bail condition.
19. Your sentence is increased to 11 months imprisonment.

MITIGATION

20. You will ~~not~~ ^{AMHP} get any reduction for having a past good history.
21. I accept that you are remorseful.
22. I accept that you must have been frustrated at the time.
23. You have cooperated with police.
24. You are a first offender.
25. Your sentence is reduced to 7 months imprisonment.

GUILTY PLEA

26. Your guilty plea is early and I will reduce your sentence to 4 months and 2 weeks imprisonment.

SUSPENSION

27. I can suspend your 4 months and 2 weeks imprisonment term either in whole or in part pursuant to section 26 (1) and (2) (b) of the **Sentencing and Penalties Act 2009**.
28. 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.
29. Your sentence will be aimed at deterrence and to punish you adequately.

SENTENCE

30. You will receive an aggregate sentence for both counts.
31. You are sentenced to an aggregate 4 months and 2 weeks imprisonment.
32. You have spent 13 days in police custody and in your case, I consider this to be punishment and I will deem this as time already served.
33. You have 4 months and 1 day imprisonment remaining.
34. I will suspend 2 months imprisonment for the next 18 months.
35. Commit any other offence in the next 18 months and this term held in waiting maybe activated.
36. You will serve 2 months and 1 day imprisonment, immediately.
37. The DVRO with section 27 standard non-molestation conditions which was imposed on you on the 24th of April 2018 is made final. You are to behave towards the victim your nephew. You breach any of these conditions and you may be charged and prosecuted for another offence. You can take a copy of the order after this.

38. 28 days to appeal.



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Lisiate T.V. Fotofili
Resident Magistrate

Dated at TAVUA this 10th day of May 2019