

IN THE MAGISTRATES' COURT OF FIJI
AT TAVUA
CRIMINAL JURISDICTION

Criminal Case No: 87 - 2020

STATE

-v-

JOVESA SADRATA

Before : RM Fotofili L.
For Prosecution : A/WCPL Chand A. [Police Prosecution]
Accused : In Person, Waived Right To Counsel
Date of Sentence: 23rd November 2020

SENTENCE

BACKGROUND

1. JOVESA SADRATA, you have pleaded guilty to the following charge:

COUNT 1

Statement of Offence

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

Particulars of Offence

JOVESA SADRATA on the 10th day of March, 2020 at Tavua Town in the Western Division wilfully and unlawfully assaulted PC 5387 SEMI NAMUSUDROKA in due execution of his duty.

COUNT 2

Statement of Offence

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

Particulars of Offence

JOVESA SADRATA on the 10th day of March, 2020 at Tavua in the Western Division resists the lawful arrest of **PC 5387 SEMI NAMUSUDROKA** with intent to resist their arrest.

2. I am satisfied that your guilty plea is voluntary. Your plea too is supported by the evidence. You have also made admissions in court and admitted the facts proposed by the prosecution. I am also satisfied that you understand the consequence of your plea and admission.
3. The prosecution did not tender the medical report of the victim as it could not be located but oral evidence of your assault leading to his injury has been led in oral evidence which you did not dispute and which I find and accept to be proven beyond a reasonable doubt.
4. I find you guilty and I convict you of both counts in the charge accordingly.
5. You committed a theft case stealing approximately \$10,500 worth of items. You had grabbed the victim's bag from a table while the victim was in a restaurant in town around lunch time. That theft case is the subject of Tavua CF 86 – 20 and I have sentenced you based on your guilty plea to 14 months imprisonment for that case and you were sentenced on the 27th of October 2020.
6. Police pursued you that same afternoon when the 'grab and run' was reported and which has resulted in the two counts of serious assault and resisting arrest for which you are to be sentenced now.
7. The victim PC Namusudroka was one of the police officers who pursued you that afternoon. He was in his police training attire. You knew he was a police officer. He got off the police vehicle near Rukuruku bridge and went into the bush to look for you. When you saw him, you tried to run away. He got hold of the belt on your pants. That is when you threw two punches on him. One punch landed on his right eye and the other punch landed on his upper right lip. He received a bruise to his right eye and a cut to his lip as a result of your punches. He tackled you to the ground and with the help of other police officers you were overpowered.
8. You were interviewed a day later after your arrest. You voluntarily admitted knowing that the victim was a police officer. You admitted that you punched him two times and you pulled him down. You admitted punching his chest, face and lips.
9. You have been in remand since appearing before for me for the first time on the 12th of March 2020. You had several cases pending before me and I was satisfied that there was a compelling case for the prosecution. You had to be remanded. In

addition, your time in remand too has been absorbed and taken into account when I sentenced you in your theft case Tavua CF 86 – 20.

10. No time you have spent in remand in this case will be considered as time served as you have received that benefit in your theft case Tavua CF 86 – 20. You will not get a second benefit.
11. You were a first offender when you committed the offences of serious assault and resisting arrest.
12. You are 20 years old. You apologise for wasting the court's time and resources. You are remorseful for your actions. You were raised by your grandparents ever since you were six years old. You help your grandparents in the farm.

AGGREGATE SENTENCE

13. The two counts were committed in the course of the same transaction or founded on the same facts.
14. Pursuant to section 17 of the **Sentencing and Penalties Act 2009**, I will impose an aggregate sentence on the you for both counts.
15. Since Count 1 - serious assault is the more serious of the two counts, I will use that as the foundation when passing your aggregate sentence.

LAW

16. An amendment [**Crimes (Amendment) Act 2018**] was made pushing the maximum imposable up to 10 years imprisonment and the increase came into effect on the 21st of March 2018 [Legal Notice No. 16 of 2018].
17. Since bodily harm was caused to the police officer, the maximum sentence that is imposable by law on the defendant is up to 10 years imprisonment.

TARIFF

18. The courts sentencing preference for the offence of serious assault is by imposing a 6 to 9 months imprisonment term [**Epeli Talakubu v. The State** Criminal Appeal No HAA 37 of 2016; **State v Batiratu** [2012] FJHC 864; HAR0001.012].

19. The above tariff is applied in cases where the serious assault attracts up to 5 years imprisonment or if no bodily harm is sustained by the officer.
20. *Ipsa facto* the punishment or tariff should be doubled because of the amendment to the law and we should expect between 12 months to 18 months imprisonment if bodily harm is sustained by the police officer.

STARTING POINT

21. Considering the objective seriousness of the case, I select 14 months imprisonment as a starting point.

AGGRAVATING FEATURE

22. The offence was committed in pursuit of evading arrest.
23. The police officer was punched on the eye and lip.
24. I increase your sentence 24 months imprisonment.

MITIGATION

25. I do not find your family circumstance compelling.
26. However, you are a first offender.
27. You are young.
28. You cooperated with police when interviewed.
29. I reduce your sentence to 18 months imprisonment.

GUILTY PLEA

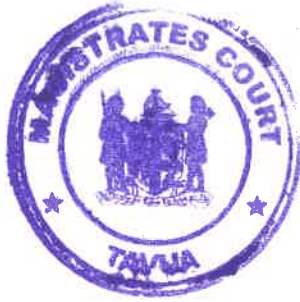
30. I accept that your guilty plea is early and I will reduce your sentence to 12 months imprisonment.

SUSPENSION

31. 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 as long as the sentence is below to 2 years imprisonment.
32. It is discretionary for the court to impose a non-parole period if the sentence is less than 2 years but not less than 1 year.
33. 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.
34. Your sentence will be aimed at deterrence and to punish him adequately.

SUMMARY

35. **JOVESA SADRATA**, you will receive an aggregate or combined sentence for both counts.
36. As I have explained earlier, no time spent in remand will be considered as time served.
37. For both counts, you are sentenced to an aggregate 12 months imprisonment.
38. I decline fixing any parole period which should help in your rehabilitation.
39. I refuse to suspend your imprisonment term in part or in whole and this is primarily for deterrence. Those who assault police officers while exercising their duty must expect immediate and long imprisonment terms.
40. I am aware of your current imprisonment term which I imposed on you in your theft case Tavua CF 86 – 20.
41. I have considered the totality principle and the one transaction rule.
42. Out of your aggregate 12 months imprisonment in this case for serious assault and resisting arrest, I order that you serve 3 months imprisonment concurrently with your current imprisonment term and the remaining 9 months to be served consecutively to your current imprisonment term for theft.
43. 28 days to appeal.



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Lisiata T.V. Fotofili
Resident Magistrate

Dated at TAVUA this 23rd day of November, 2020