

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

Traffic Criminal Case No: 69 - 2018

STATE

-v-

VIKLESH SHYAMAL PRASAD

Before : RM Lisiate Fotofili
For Prosecution : Inspector Lenaitasi S. [Police Prosecution]
Accused : Mr. Samy A. [Legal Aid Commission]
Date of Sentence : 10th January 2020

SENTENCE

1. **VIKLESH SHYAMAL PRASAD**, you have pleaded guilty to the following charge:

Statement of Offence

DRIVING MOTOR VEHICLE WHILST THERE WAS PRESENT IN THE BLOOD A CONCENTRATION OF ALCOHOL IN EXCESS OF THE PRESCRIBED LIMIT: Contrary to section 103 (1) (a) and 114 of Land Transport Act 35 of 1998.

Particulars of Offence

VIKLESH SHYAMAL PRASAD on the 19th day of November, 2018 at Tavua in the Western Division drove a motor vehicle registration number IR. 778 at Tavua Town whilst there was present in your breath 88 micrograms of alcohol which is equivalent to 193.6 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 find you guilty and convict you of the charge.

4. It was about 11pm. Police who were on patrol noticed the vehicle which you drove out of a garage being driven in a 'zig zag' manner with loud music. You had a friend with you inside the vehicle. You were stopped and it was noticed that you had blood shot eyes and you heavily smelt of alcohol. You were then escorted to the police station for your breath to be tested. Your breath was tested on dragger machine 7110 and the result showed that you had 88 micrograms of alcohol per 100 millilitres of your breath.
5. Later, you were interviewed under caution by police. You are 27 years old. You are a manager of a shop. You admitted that you were driving and that you were drunk. You had returned from visiting a relatives place. You had drank 12 bottles of beer. You apologise and you promise that you will not repeat what you did.
6. 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**].
7. 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**].
8. After calculation, it is established that you had 193.6 milligrams of alcohol in 100 millilitres of your blood.
9. You exceeded the legal limit by approximately 113 milligrams.
10. You are a first offender.
11. You have not spent any time in remand.
12. You are 27 years old. You have a baby which would be about 5 or 6 months old now. You are remorseful for your actions. You seek a non-conviction because of your employment. You ask for a second chance.

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. It is mandatory that you are to be disqualified from driving anytime between 3 months even up to 2 years.

SENTENCING RANGE or SENTENCING TARIFF

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

Starting Point

16. Based on the objective seriousness of the case, I select a starting point of 2 months imprisonment.

Aggravating Factor

17. I do not find the distance that you drove in your intoxicated state as being lengthy and I will not use this as an aggravating factor.
18. However, I find that you exceeded the legal limit by a relatively high amount contrasted with other cases I have come across so far. Your level of intoxication and driving around a potentially lethal weapon was dangerous for you, your friend who was a passenger and other road users.
19. Your sentence is increased to 9 months imprisonment.

Mitigating Factors

20. You will get some discount for being a first offender.
21. You cooperated with police when interviewed.
22. I accept that you are remorseful.
23. You have a family to support.

24. Your sentence is reduced to 3 months imprisonment.

Guilty Plea

25. You have pleaded guilty early.
26. Your sentence is reduced to 2 months imprisonment.

Suspended Term, Disqualification and Non-Conviction

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 will be 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 or disqualified from holding or obtaining a driving license. The law says that it is mandatory. The primary issue is the length of your disqualification.
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)].
31. I accept that I have powers to order that no conviction be entered or recorded against you [section 15 and 16 of the **Sentencing and Penalties Act 2009**].
32. Your sentence is aimed at deterrence as is to punish you adequately.

SUMMARY

33. No further time will be deducted as you did not spend any time in remand.
34. You are sentenced to 2 months imprisonment.
35. I am inclined to suspend this imprisonment term in whole and it will be suspended for the next 2 years. You are not to commit any other offence [punishable with imprisonment] in the next 2 years. If you do, this 2 month imprisonment held in reserve may be activated.
36. I order that you pay a fine of \$300 and this is to be paid in 35 days. You default and you risk up to 15 days imprisonment.
37. I will give you a date hereafter to check on whether you have paid this fine.
38. I am not inclined to grant your application that no conviction be recorded or entered against you. A conviction will remain against you.
39. You are also disqualified from obtaining or holding a driving license for the next 6 months [surrender your license].
40. 28 days to appeal if you are dissatisfied with your sentence.



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Lisiate T.V. Fotofili

Resident Magistrate

Dated at Tavua this 10th day of January, 2020