

IN THE MAGISTRATES' COURT OF FIJI

AT NASINU

CRIMINAL JURISDICTION

Criminal Case No. 1786 of 2019

STATE

v.

ABHISHEK KELVIN JOSEPH

For the State: *Constable P. Prasad*

For the Defendant: *In Person*

SENTENCE

1. You entered a guilty plea to one count of ***Breaching Domestic Violence Restraining Order*** contrary to section 77 (1)(c) of the **Domestic Violence Act 2009** in that you “on the 14th day of December 2019 at Nasinu in the Central Division, having notice of Domestic Violence Restraining Order by which he was bound without reasonable excuse, contravened the DVRO Order, file no. 498/19 by entering the house of said applicant namely **JOSEPH ASHOK** thereby breaching Domestic Violence Restraining Order Section 27 and 29 of the” Act.
2. You indicated in open Court that you understood and admitted the Facts against you. The Facts show that on 14 December 2019 you entered into **JOSEPH ASHOK's** home and in so doing you breached non-contact orders issued against you in Criminal Case No. 498 of 2019. **JOSEPH ASHOK** and **MANSHIV MANAV** had been at home when **MANSHIV** entered the kitchen in search of his shoe. He saw you in that kitchen at which point you ran away and jumped the fence in their backyard. The matter was reported to the Police and you were arrested and processed for Court.
3. I am satisfied your guilty plea was unequivocal. I find you guilty and convict you of ***Breaching Domestic Violence Restraining Order.***

MAXIMUM PENALTY

This is your first offence of this kind. The maximum penalty is a fine of \$1000.00 and imprisonment for 12 months.

AGGRAVATING FACTORS

5. There are no aggravating factors readily discernable on the material before me.

MITIGATING FACTORS

6. You are 23 years old. You are single and work for a shoe and bag repairing shop in Suva. You earn between \$50 and \$60 a day. You claim to have learnt your lesson inside prison and you say you are very sorry.
7. You have entered a guilty plea at the first available opportunity and you have been in remand for 16 days.

SENTENCING

8. The only mitigating factors worth anything are the fact that you entered a guilty plea and have been in remand for 16 days. Against this is the fact that what you did was objectively very serious. You deliberately breached a Court Order. Worse, you deliberately breached a protective order.
9. It is difficult to arrive at a principled sentence that fits both crime and criminal using the starting point plus aggravating less mitigating factors ordinarily favoured by sentencing courts including this one. One would either have to pick a ridiculously high starting point or risk arriving at a sentence in the negative range in effect rendering the sentencing process nugatory.
10. No, an instinctive sentencing approach best fits. For your crime of deliberately breaching a protective order after taking into account the fact that no violence was used, the period of breach was minimal and the fact that you are a first offender who entered a guilty plea at the first available opportunity and who has already spent 16 days in remand, I sentence you to imprisonment for 1 month suspended for a period of 2 years.
11. You must not commit another crime in the next two years. If you do, you may find yourself serving the 1 month term I suspended today.
12. Moreover, I fine you \$100.00 to be paid in 7 days *i/d* 7 days imprisonment.
13. **28 days to appeal to the High Court.**

Seini K Puamau
Resident Magistrate



Dated at Nasinu this 2nd day of January 2020.