

IN THE MAGISTRATES' COURT OF FIJI
AT TAVUA
CRIMINAL JURISDICTION

Criminal Case No: 250 - 2019

STATE

-v-

SAKARAIA TELAWA

Before : RM Fotofili L.
For Prosecution : WPC Chand A. [Police Prosecution]
Accused : In Person, Waived Right To Counsel
Date of Sentence : 4th February 2020

SENTENCE

BACKGROUND

1. **SAKARAIA TELAWA**, you have pleaded guilty to the following charge:

Count One

Statement of Offence

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

Particulars of Offence

SAKARAIA TELAWA on the 4th day of November, 2019 at Tavua in the Western Division assaulted **ISIMELI VUNISA** thereby causing him actual bodily harm.

Count Two

Statement of Offence

BREACH OF ORDER SUSPENDING SENTENCE: Contrary to section 28 (1) of the *Sentencing and Penalties Act 2009*.

Particulars of Offence

SAKARAIA TELAWA on the 4th day of November, 2019 at Tavua in the Western Division, during the operational period of Suspended Sentence of Imprisonment vide Tavua Court File Number 298/18 committed another offence punishable by imprisonment.

I am satisfied that your guilty plea and admission in court is voluntary and that you understand the consequences. The evidence also supports your guilty plea. Generally, it is not a defence to challenge someone to a fight on the street to settle a dispute. Even if you were not issuing the challenge but a challenge was issued to you and you accepted that is still not a defence.

3. I find you guilty of both counts and I convict you accordingly.
4. You were at a shop in town. The 44 year old male victim suspected that you were trying to steal from a lady and told you to stop. An argument developed between you and the male victim. Even a challenge to a fight ensued. You and the male victim punched each other. You threw several punches and at least one of those landed on the victim's face injuring him. You picked up a stone as the victim had called others to assist him. The victim was medically examined about 3 hours later. His nose was tender and there was some blood there. There was a minor cut to his chin. After the matter was reported to police, you were arrested and interviewed. You admitted drinking liquor near the shop. You went inside the shop and the alleged victim caused some trouble, you said. You then followed the victim and then picked up the stone when some of the victim's workmates approached. You and the victim punched each other. You said that the victim swore at you.
5. I have taken judicial notice of the records in your file CF 298 – 18. In that case, I sentenced you on the 27th of August 2019 for breaching your bail conditions. You were sentenced to 15 days imprisonment which was suspended in part. You served 8 days imprisonment and the remaining 7 days was suspended for 9 months.
6. The suspended term was still in operation when you punched the victim during your dispute at and from the shop when he suspected you of trying to steal.
7. You are not a first offender.
8. You have been in remand since appearing on the 7th of November 2019. You have and had several cases before me [see for example Rakiraki CF 286 – 18 and CF 20 – 2019] together with your past conviction in CF 298 – 18. I was reluctant to release you on bail as you were unlikely to behave or honour your bail conditions. You had to be remanded in custody. Being in remand was necessary.
9. I will not consider any time spent in remand as time served.
10. You are 20 years old. You intend to enrol with a local university. You are sorry for what you have done. You seek mercy.

LAW

11. The maximum sentence that is imposable by law for the offence of assault occasioning actual bodily harm is up to 5 years imprisonment.
12. You are liable to serve the whole or part of the 7 days imprisonment term which remains to be served in your case CF 298 – 18. The 7 days imprisonment term could even be ordered to be served consecutively to the sentence in count one for assault causing actual bodily harm. You could even be fined up to \$10,000. The court could even extend the suspended term for another 12 months. The court could also decline to make any order in relation to the suspended sentence [section 28 of the **Sentencing and Penalties Act 2009**].

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 objective seriousness of the offence, a 4 month imprisonment term is selected as a starting point.

AGGRAVATING FEATURES

15. This was in public.
16. I increase your sentence to 5 months imprisonment.

MITIGATION

17. You will not get any reduction in sentence for having a good history or character.
18. You are young.
19. You are remorseful.

20. You cooperated with police.
21. Both you and the victim, I accept were engaged in escalating the situation to a physical confrontation.
22. Your sentence is reduced to 3 months imprisonment.

GUILTY PLEA

23. You have pleaded guilty early and I will reduce your sentence to 2 months imprisonment.

SUSPENSION

24. 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**.
25. 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.
26. Your sentence will be aimed at deterrence and to punish you adequately.

SENTENCE

27. As I have explained earlier, I will not consider any time you have spent in remand as time served.
28. For count one, you are sentenced to 2 months imprisonment.
29. I refuse to suspend this term either in part or in whole.
30. You will serve this 2 months imprisonment immediately.
31. For count two, I activate the 7 days imprisonment which was held in suspense in your Tavua case CF 298 – 18.
32. I am mindful of the one transaction rule and totality principle.

33. You will serve this 7 days imprisonment, consecutive to your 2 month imprisonment term imposed on you for count one.
34. There is no need for a domestic violence order in your case as there is no evidence before me to suggest that any domestic relationship exists between you and the male victim.
35. Altogether, you will serve 2 months and 7 days imprisonment immediately.
36. 28 days to appeal.



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Lisiate T.V. Fotofili
Resident Magistrate

Dated at Tavua this 4th day of February, 2020