

IN THE MAGISTRATES' COURT OF FIJI
AT TAVUA
CRIMINAL JURISDICTION

Criminal Case No: 292 - 2019

STATE

-v-

JOSEFA BACA

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

DECISION

BACKGROUND

1. JOSEFA BACA, you were to be sentenced today pursuant to your admission and guilty plea. For the reasons that will become apparent in the course of this decision, I will have to defer your sentence.
2. You have pleaded guilty to the following charge:

First Count

Statement of Offence

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

Particulars of Offence

JOSEVA BACA on the 3rd day of December, 2019 at Tavua in the Western Division assaulted VENIANA ADI LOLOMA thereby causing her actual bodily harm.

Second Count

Statement of Offence

DAMAGING PROPERTY: Contrary to section 369 (1) of the *Crimes Act of 2009*.

9. In CF 273 – 18 you received a 3 month imprisonment term. 1 month was deducted for the time you spent in remand. The remaining 2 months imprisonment was suspended for the next 2 years and 2 months. A domestic violence restraining order [DVRO] with section 27 standard non-molestation conditions was imposed and finalised on you. You were sentenced on the 29th of October 2018.
10. You received an aggregate sentence in CF 348 – 18 which was an aggregate 4 month imprisonment term which was partly suspended. You served 2 months imprisonment and the remaining 2 months imprisonment was suspended for 3 years. A DVRO with section 27 standard non-molestation conditions was finalised on you too. You were sentenced on the 18th of June 2019.

REMAND

11. In this case before me for which you are to be sentenced, you have been in remand since appearing for the first time on the 19th of December 2019. Considering your past convictions and the domestic nature of the offence, you had to be remanded in custody. It was necessary. I calculate so far that you have spent approximately 1 month and 3 weeks in remand.

MITIGATION

12. You are 26 years old. You have children to look after. One is aged 3 and the other is 2 years old. You have sought forgiveness from your wife. You seek forgiveness from the court.
13. Your wife was present in court on the 28th of January 2020 and she verifies that you have apologised to her. You two are still together.

HABITUAL OFFENDER

14. Considering your past abuse against your wife, a strong argument could be made that you are a habitual offender. You are fortunate that the prosecution have not filed any charge for breaching your suspended sentence. It appears that your past sentences have not deterred you.
15. You could be declared a habitual offender pursuant to section 10 (b) and section 11 of the **Sentencing and Penalties Act 2009** [also see for example **Etuate Suguturaga v The State** Criminal Appeal No. AAU0084 of 2010 [5th of December 2014] paragraphs 10 to 15].

16. A Magistrate cannot declare you to be a habitual offender, that discretionary declaration is reserved only for the High Court and the higher appeal courts [section 11 (1) and (2) of the Sentencing and Penalties Act 2009].
17. Your sentence, should you be declared a habitual offender, will have to reflect the need to protect the community [your wife being a member of the community] and the need for a longer sentence and not a sentence only proportionate to the gravity of the offence.

ORDERS

18. Based on the above, I transfer your case for sentencing to the High Court pursuant to section 191 and 193 (1) and (2) of the Criminal Procedure Act 2009;
19. I reserve any finding of guilt or reserve any formal entering of a conviction against you and that will be determined by the High Court;
20. I reserve any determination or declaration of you being a habitual offender, to the High Court;
21. I reserve passing any sentence on you in this case.
22. I direct the registry to prepare the records for this case and your other files CF 273 – 18 and CF 348 – 18 in anticipation of your case being heard in the High Court.
23. You will be remanded in the meantime and we will fix a date before the High Court hereafter.



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Lisiate T.V. Fotofili
Resident Magistrate

Dated at Tavua this 4th day of February, 2020