

IN THE MAGISTRATES' COURT OF FIJI  
AT TAVUA  
CRIMINAL JURISDICTION

Criminal Case No: 217 - 2017

STATE

-v-

TIMOCI BROWN

For Prosecution : Inspector Lenaitasi S. [ Police Prosecution ]  
Accused : In Person, Waived Right To Counsel  
Date of Trial : 15<sup>th</sup> November 2019  
Date of Judgment : 31<sup>st</sup> January 2020  
Date of Sentence : 18<sup>th</sup> February 2020

SENTENCE

1. **TIMOCI BROWN**, having pleaded not guilty and after your trial, I have found you guilty and convicted you of the following:

*Statement of Offence*

**INDECENT ASSAULT**: Contrary to section 212 of the **Crimes Act 2009**.

*Particulars of Offence*

**TIMOCI BROWN**, on the 26<sup>th</sup> day of August, 2017 at Tavua in the Western Division unlawfully and indecently assaulted **LOATA LEITALA**.

2. The female victim was 19 years old at the material time and works at a restaurant in town. You are a regular customer. On the day in question at around 6pm, you came into the restaurant with your friends. You were drunk. You were shouting, had blood shot eyes and you smelt of liquor. Some food was ordered. The female victim was serving you and your friends. You slapped the female victim's buttocks and pulled her top. You also told the victim not to show off. She did not like what you did. You were rowdy and rude and had a false sense of confidence being in the company of your friends and being in your intoxicated state.

3. You have not spent any time in remand.
4. You are a first offender.
5. You 35 years old. You are a farmer. You look after your 70 year old uncle. You seek forgiveness.

#### **MAXIMUM SENTENCE**

6. For indecent assault, the maximum punishment that is imposable is up to 5 years imprisonment.

#### **SENTENCING RANGE or SENTENCING TARIFF**

7. The sentencing tariff sentencing tariff for indecent assault is between 12 months to 4 years imprisonment [ **Rokota v The State** [2002] FJHC 168; HAA0068J.2002S ( 23 August 2002 ) ].

#### **Starting Point**

8. Considering the objective seriousness of the offence, I select 12 months imprisonment as the starting point.

#### **Aggravating Factors**

9. You slapped the victim's buttocks.
10. This was in public when the restaurant was open.
11. I am sure that she must have felt outnumbered and uncomfortable.
12. You were drunk.
13. I increase your sentence to 20 months imprisonment.

### **Mitigating Factors**

14. Your family circumstance is not that compelling.
15. However, you are a first offender and that is the only mitigating factor I see in your case.
16. I reduce your sentence to 16 months imprisonment.

### **DISCRETION**

17. 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 does not exceed 2 years imprisonment.
18. It is also discretionary whether a non-parole period should be imposed if your sentence is less than 2 years but not less than 1 year imprisonment, pursuant to section 18 ( 3 ) of the **Sentencing and Penalties Act 2009**.
19. I am also mindful of section 4 of the **Sentencing and Penalties Act 2009** when considering your sentence in this case.
20. I place emphasis on the community's denunciation of this type of offending and the need for deterrence when sentencing you.

### **SUMMARY**

21. No further reduction in sentence will be made as you did not spend any time in remand.
22. You are sentenced to 16 months imprisonment.
23. I decline fixing any non-parole period.
24. I am inclined to suspend your imprisonment term but only in part.
25. 10 months of your imprisonment term is suspended for the next 3 years.

26. Do not to commit any other offence punishable with imprisonment in the next 3 years. If you do, this 10 months imprisonment term held in waiting or in reserve may be activated.
27. You will serve 6 months imprisonment immediately.
28. There is no need for a Domestic Violence Restraining Order [ DVRO ] to be imposed in this case as there is no family or domestic relationship in existence.

28 days to appeal.



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Lisiate T.V. Fotofili

**Resident Magistrate**

Dated at Tavua this 18<sup>th</sup> day of February, 2020.