

IN THE MAGISTRATES' COURT OF FIJI

AT SUVA

CRIMINAL JURISDICTION

Criminal Case No. 1841 of 2019

STATE

v.

TOMAS BELMAR

Prosecution : Sergeant R. Ram, *of counsel*, for the Police Prosecution Department

Accused : Mr. S. Nadan, *of counsel*, of Nadan Law.

EX TEMPORE SENTENCE

I find on the facts that your level of moral culpability was low. This was a mere technical breach of the law – a simple failure to stop and submit brought on by your medically diagnosed anxiety. In all other material respects, you were cooperative that day.

PC Kunal's perceptions from a distance notwithstanding, it is clear to me that PC Atolinio was acting proactively rather than reactively that day. It was not so much that he thought you were a live threat but simply that he thought that your potential intoxication levels and your movements made you a potential threat to his safety and your safe transport to the Police Station.

In totality, you resisted arrest but you did not do so violently or so aggressively that PC Atolinio believed himself in direct jeopardy from you that day. I am satisfied that you are genuinely remorseful, meant no disrespect to the police officers who you engaged with and I accept that this incident was compounded by language issues at the time. In all the circumstances, I am satisfied that a criminal conviction – to brand you a criminal for 10 years is unnecessarily harsh and excessive. The efficacy of the legislation is not going to be frustrated by the exercise of my statutorily given discretion at this time.

The interests of justice being best met by the imposition of a fine without recording a conviction - that is the order I make here and now. Tomas Belmar, you are fined \$500.00 to be paid into Court within 3 months i/d 15 days imprisonment. I make this sentencing order without entering a conviction against you. This fine is set as a deterrent to you and other would-be offenders in this country. When police officers move to arrest you, you must immediately stop and comply.

28 days to appeal.

Review date: 2 July 2020



Seini K Puamau
RESIDENT MAGISTRATE

DATED at Suva this 1st day of April 2020.