

IN THE HIGH COURT OF FIJI

AT SUVA

REVISIONAL JURISDICTION

High Court Review No. 001 of 2014

STATE

v.

KARAM CHAND BIDESI

Respondent

Counsel: Ms. S. Kant

Respondent Absent by choice

Dates of hearing: 26 March, 15 April, 23 May 2014

17 June, 2014

JUDGMENT

- [1] The respondent was convicted in the Magistrate's Court at Nasinu on his own plea with the offence of driving with excess alcohol in his blood. He was sentenced by the Magistrate to a fine of \$150 and his licence was not suspended.
- [2] Pursuant to the review provisions in section 260 of the Criminal Procedure Decree, this Court has called for the file to consider whether the sentence passed was appropriate in the circumstances.

[3] The facts were that on the 17th April 2010 at about 2341 hours, the accused was driving a motor vehicle on the Kings Road when he was stopped by a Police officer and tested for alcohol. He was found to have an excess reading on his breath so was taken to Central Police Station where he was properly tested. It was found that he had 1276 milligrams of alcohol in 100 millilitres of blood. He was interviewed under caution when he admitted to have consumed 4 to 5 nips of whiskey.

[4] The accused admitted these facts in Court and mitigated his plea. He said he was

- 62 years old
- Married with 5 children
- He had retired in 2009
- He was remorseful
- He had been driving since 1971
- He was working on a farm and had a daughter in Form 6
- He asked that his license not be suspended.

[5] In her sentencing notes (which appear to have been written in April 2014), the Magistrate said that she took into account the fact that it was his first offence and that had been a civil servant. He needed to drive to sell his produce in the market. As a result she decided not to suspend the licence but imposed the fine.

This Review

[6] The prescribed penalty for this offence is provided in the Schedule to the Land Transfer Act 1998. The penalty for this very offence (for first offence) is \$2,000 fine or 2 years imprisonment and a mandatory disqualification from 3 months to 2 years.

- [7] In Ratuvou HPA 60.2002, Shameem J in talking about the penalties for the same offence said:

“Section 114(2) of the Act provides that the “count may impose a fine up to the maximum amount shown or a term of imprisonment or both such fine and imprisonment.” The word “may” create discretion. This discretion may be exercised by imposing a fine in any sum up to the maximum, but may also be exercised by not imposing either fine or a period of imprisonment. What is mandatory is a period of disqualification. The Magistrate has a discretion to impose more than 3 months but may not impose less”.

She expressed similar sentiments in Prasad HAA 0038.2003 where she said:

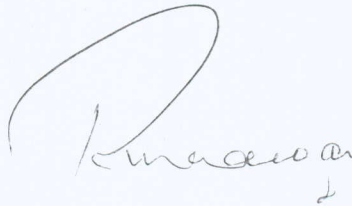
“The Courts do not have powers to order disqualification between certain hours of the day. They do not have powers to disqualify from driving certain classes of vehicle. When a person is disqualified from driving, he is taken off the roads for the period of time specified”.

- [8] The legislation is quite clear. Following a conviction, the driver's licence must be suspended for at least 3 months.
- [9] It makes no difference how compelling his mitigation might be. He can be the most revered person in the nation, he can be a sports super-star, he can be the Chief Magistrate. Powerful mitigation can impact on the fine or term of imprisonment but not on the disqualification. Civil servants do not attract special considerations.
- [10] As a result the very lenient sentence imposed below is set aside. This Court will re-sentence the accused as follows:

The fine which it is assumed has already been paid will be \$150.

The accused's driving licence will be suspended from today for a period of four months.

[11] The accused having been served with notice of these proceedings elected not to come or be represented. He will now be served with this judgment and the Land Transport Authority notified.



P.K. Madigan
Judge

