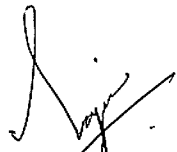


5. The learned Magistrate had considered State v Sikitora [2010] FJHC 466; HAC 067.2010L (22 October 2010) as guide line Judgment and selected a starting point of 12 months.
6. He had added 3 years for the following aggravating factors:
 - (i) Serious breach of trust
 - (ii) Serious and multiple injuries suffered by son
 - (iii) Complainant being young age
 - (iv) Complainant being vulnerable
 - (v) The serious abuse of authority as a father
 - (vi) Blatant breach of the child's right to be free from harm
7. Learned Magistrate had deducted 6 months for the following mitigating factors:
 - (i) 36 years, married with three children,
 - (ii) Employed and earns \$120 a week
 - (iii) Seek forgiveness
 - (iv) Angry at the time of the incident
 - (v) First offender
8. Further 18 months were deducted for the guilty plea.
9. The final sentence was 2 years imprisonment.
10. The learned Magistrate had given a non-parole period of 18 months.
11. This is an appeal against the sentence filed within time.
12. The grounds of appeal against the sentence are:
 - (i) That the learned trial Magistrate erred in law when his worship wrongly took into account elements of the offence as aggravating features to justify an enhance of sentence
 - (ii) The insufficient discount was credited for a first offender and mitigation features
 - (iii) That the sentence is harsh and excessive
13. Both parties have filed written submissions.
14. The guide line Judgment considered by the learned Magistrate State v Sikitora [2010] FJHC 466; HAC 067.2010L (22 October 2010) is a case of where the accused was charged with Act with intent to cause grievous bodily harm and under Section 255 (a) of the Crimes Decree. The accused was convicted of Assault occasioning actual bodily harm contrary to Section 275 of the Crimes Decree and was sentenced to 18 months imprisonment. In appeal Hon. Mr. Justice Paul Madigan having considered "However

despite the abuse and the severity of it, regard must be had firstly to the evident frustration of the father wanting to raise his daughter to be responsible and truthful and the secondly to the rights of the accused as a parent to punish” ordered a sentence of 6 months imprisonment suspended for 18 months. The accused in that case had unlawfully wounded the daughter with a hose pipe.

15. In **Maharaj v State** [2010] FJHC 467; HAA 048.2010 (25 October 2010) Hon. Mr. Justice Daniel Goundar upheld a sentence of 17 months imprisonment where an accused picked up an iron rod and struck the victim’s head. Victim was de facto wife who sustained a laceration on scalp that required six stitches. The accused was charged with Unlawful wounding contrary to Section 261 of the Crimes Decree.
16. In **Vutovuto v State** [2014] FJHC 929; Criminal Appeal 21.2014 (18 December 2014) Hon. Mr. Justice Paul Madigan set aside a sentence of 18 months ordered by the Learned Magistrate and imposed a sentence of 14 months imprisonment for the accused who had thrown a kitchen knife at the husband’s stomach. In an attempt to ward off the knife victim’s middle right finger was wounded resulting in profuse bleeding. The accused was charged for unlawful wounding contrary to Section 261 of the Crimes Decree.
17. Considering all above, the learned Magistrate had erred in following a wrong tariff Judgment.
18. This background warrants this Court to exercise its powers in terms of Section 256 (3) of the Criminal Procedure Decree to quash the sentence passed by the Magistrate and pass other sentence which reflects the gravity of the offence within the acceptable range of tariff.
19. Accordingly, I take a starting point of 12 months. I add another 12 months for the aggravating factors. I deduct 6 months for the mitigating factors. Further 6 months to be deducted for the Guilty plea. The final sentence is 12 months imprisonment. The appellant had served the sentence from 2.12.2014 for a period of 3 months. The balance 9 months is suspended for a period of 3 years.
20. The appellant is explained the suspended sentence.
21. The learned Magistrate had correctly issued a permanent Domestic Violence Restraining Order (DVRO) with non-molestation conditions. A breach of the said DVRO is a criminal offence itself.
22. Appeal allowed. Sentence varied.




Sudharshana De Silva
JUDGE

At Lautoka
27th February 2015

Solicitors : Applicant in person
 Office of the Director of Public Prosecutions for Respondent