

IN THE HIGH COURT OF FIJI
AT LAUTOKA
APPELLATE JURISDICTION

Criminal Appeal Case No: HAA 25 OF 2018

BETWEEN:

MAIKELI MOCETADRA

APPELLANT

AND:

STATE

RESPONDENT

Counsel: Appellant in Person
Ms R Uce for the Respondent

Date of Hearing: 24 May 2018

Date of Judgment: 25 May 2018

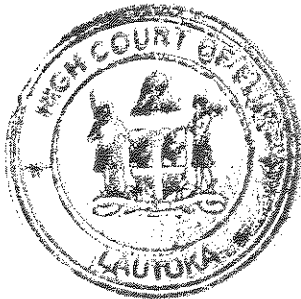
JUDGMENT

- [1] This is a timely appeal against sentence only. On 4 April 2018, the appellant was convicted on his own guilty plea and sentenced to 9 months' imprisonment for assault causing actual bodily harm. The facts were that on 7 June 2017, the appellant punched a teenage boy twice in the face while he was walking along Narara Parade in Lautoka. The appellant was drunk at the time and the assault was unprovoked. The victim sustained bruises on his lips.
- [2] In mitigation, the appellant informed the court that he was 22 years old and unemployed. He expressed remorse and asked for leniency. The maximum penalty prescribed for assault causing actual bodily harm is 5 years imprisonment. The tariff ranges from a suspended sentence to 9 months imprisonment. The learned magistrate used 7 months as

a starting point and then adjusted the sentence to reflect the mitigating and aggravating factors before arriving at a term of 9 months. The learned magistrate decided not to suspend the sentence because the appellant had recent previous convictions for aggravated robbery, burglary and theft.

- [3] The only complaint of the appellant is that the learned magistrate did not take into account his remand period. The State concedes that the appellant had been in custody on remand for 3 months 17 days before the sentence was imposed. The learned magistrate did not make any deduction to reflect the appellant's remand period.
- [4] Section 24 of the Sentencing and Penalties Act states that in sentencing an offender the courts must consider any period that the offender had spent in custody while on remand. No precise formula is required for discounting for the remand period (*Vasuca v State* [2015] FJCA 65; AAU011.2011 (28 May 2015)). The principle is that a separate allowance should be made for any significant period that the offender spent in custody while on remand (*Sowane v State* [2016] FJSC 8; CAV0038.2015 (21 April 2016)).
- [5] The appellant's remand period was significant. The learned magistrate made an error in the exercise of his sentencing discretion by failing to consider the appellant's remand period. The sentence imposed in the Magistrates' Court is set aside and substituted with a sentence of 5 months 2 weeks imprisonment effective from 4 April 2018.

- [6] The appeal is allowed.




Daniel Goundar
JUDGE

At Lautoka
25 May 2018

Solicitor:

Appellant in Person
Office of the Director of Public Prosecution for Respondent