

**IN THE HIGH COURT OF FIJI AT SUVA
[CRIMINAL JURISDICTION]**

CASE NO: HAC. 362 of 2018

BETWEEN : STATE

AND : ALIKI HARRY

**Counsel : Mr. Kumar R. for State
: Ms. Mataika P. for the accused**

Hearing on : 14th October – 15th October 2019

Summing up on : 17th October 2019

Judgment : 01st November 2019

Sentence : 21st November 2019

SENTENCE

Mr. Aliko Harry, you stand convicted of the offence of Unlawful Wounding contrary to section 261 of the Crimes Act 2009 after a full trial.

You were initially charged with the offence of “Act with Intent to Cause Grievous Harm” contrary to section 255(a) of the Crimes Act and you pleaded not guilty to the said charge. Though you indicated your willingness to take a progressive approach to a lesser count, the State was not prepared to accept the same. The said count was taken up for trial and the ensuing trial lasted for 3 days. The complainant Mr. Marisilino Radrogale, and Dr. Jolyn Buadromo gave evidence for the prosecution while you remained silent exercising your constitutional right.

At the conclusion of the evidence and after the directions given in the summing up, the assessors unanimously found you not guilty to the count of Act with Intent to Cause Grievous Harm, but guilty to the lesser count of Unlawful Wounding.

Accordingly, this Court by its judgment dated 01st of November 2019, acquitted you of the offence of ‘Act with intent to cause Grievous Harm’ and convicted you for the offence of ‘Unlawful Wounding’ contrary to section 261 of the Crimes Act 2009.

The maximum punishment prescribed for the said offence of Unlawful Wounding is 5 years of imprisonment. There seems to be no set tariff for this offence. I follow my previous sentence in the case of **State v Namuka** - Sentence [2019] FJHC 289; HAC3.2019 (2 April 2019) and the objective seriousness of the offence and commence your sentence at 10 months of imprisonment.

The victim Mr. Marisilino Radrogale was wounded inside his own house. Though the morality of the complainant’s act was questionable, he has not done anything illegal. Due to the said aggravating factor I enhance your sentence by further two (2) months, and now your sentence is 12 months of imprisonment.

In mitigation, it is submitted that you have co-operated with the police and shown remorse by offering to take a progressive approach to a lesser count. Considering the said facts and the rest of the material submitted by you, I deduct 6 months from the above and your final sentence stands at 6 months of imprisonment.

You have been in remand from 26th of September 2018 to 30th of November 2018, for a period of 2 months and 4 days. In lieu of that I order that period to be deducted from your final sentence and the remainder would be 3 months and 26 days.

Now I will consider the provisions of section 26(1) of the Sentencing and Penalties Act. You have 53 previous convictions. Though you were finally sentenced for a period of nearly 5 months in November 2015, and has no convictions thereafter, you have only 2 previous convictions of a similar nature. I am hesitant to accept that you have rehabilitated after having 53 convictions. Therefore irrespective of the offence you are convicted of, the main purpose in sentencing you would be the protection of the community.

Therefore your final sentence of 3 months and 26 days of imprisonment will be made operational forthwith.

A permanent DVRO is issued against you for the protection of the complainant, Mr. Marisilino Radrogale.

You are given thirty (30) days to appeal to the Court of Appeal, if you so desire.


Chamath S. Morais
JUDGE



Solicitors : **Office of the Director of Public Prosecutions for the State.**
Legal Aid Commission, Suva for the Accused.