

**IN THE HIGH COURT OF FIJI**

**AT SUVA**

**CRIMINAL JURISDICTION**

**Crim. Case No: HAC 114 of 2022**

**STATE**

vs.

**JOELI ROKOTUIWAILEVU**

<b>Counsel:</b>	Ms. N. Ali with Mr. H. Nofaga for the State Ms. N. Lomaiviti for 1 <sup>st</sup> , 2 <sup>nd</sup> and 3 <sup>rd</sup> Accused
<b>Dates of Hearing:</b>	13 <sup>th</sup> , 14, 15 <sup>th</sup> , 16 <sup>th</sup> and 19 <sup>th</sup> February 2024
<b>Date of Closing Submission:</b>	27 <sup>th</sup> February 2024, and 24 <sup>th</sup> April, 2024
<b>Date of Judgment:</b>	07 <sup>th</sup> June 2024
<b>Date of Sentence:</b>	21 <sup>st</sup> June 2024

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**SENTENCE**

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1. On the 7th of June of 2024, the Court found you guilty of and convicted of one count of Acts Intended to Cause Grievous Harm, contrary to Section 255 (a) of the Crimes Act, which carries maximum penalty of life imprisonment and one count of Wrongful Confinement, contrary to Section 286 read with section 46 of the Crimes Act, which carries a maximum punishment of five years imprisonment or fine of \$1000 or both.

2. It was proved during the hearing that two of your accomplices detained the Complainant at MaxValue supermarket and then took him to Vitivou in a police vehicle, where you and your other two accomplices put him in another vehicle. You then took him to an undisclosed location in the vehicle with your two accomplices and assaulted him on the way, committing these two crimes as charged.
  
3. I term this as a case of police bullying. A group of Police Officers attached to one elite Police Team directly operating under the Commissioner of Police, as claimed by the three Accused, had unlawfully confined the Complainant, assaulted him, and criminally intimidated him for no reason while carrying out a drug raid in civilian clothes. The Police Force is a vital component of the functioning democracy, conferred with the massive responsibility of maintaining the law and order. The occurrence of crimes of this nature involving the members of the Police Force indeed undermines the confidence that the people are legitimately entitled to place in the Police Force to maintain law and order within the boundaries of the laws of the Country. The offence of Act Intended to Cause Grievous Harm is one of the serious offences against a Person. Considering these reasons, I find the objective seriousness of this offence is exceptionally high.
  
4. In view of the nature and objective seriousness of this crime, the primary purpose of this sentence is the principle of deterrence. It is the responsibility of the Court to deter offenders or other persons from committing offences of the same or similar nature and protect the community from offenders of this nature. A custodial sentence is inevitable for offences of this nature to demonstrate the gravity of the offence and reflect that society denounces such crimes without any reservation.
  
5. It appears that Courts in Fiji have adopted two approaches for tariffs for the Act Intended to Cause Grievous Harm offence. The first approach is two (2) to six (6) years of imprisonment. (**The State v Pauliasi Yasa, Criminal Case No. HAC 044 of 2012S, State v Masicola [2015] FJHC 411; HAC081.2014S (the 5th of June 2015), Felix Patel v State Criminal Appeal No HAA 030 of 2011 (the 27th of October 2011)**). The other approach is six months to five years imprisonment, and in cases where a weapon is

involved, the starting point should range from two years to five years. (**State v Vakalaca - Sentence [2018] FJHC 455; HAC027.2018 (the 31st of May 2018), State v Senivono - Sentence [2023] FJHC 648; HAC47.2023 (the 7th of September 2023), Vosa - v- State [2019] FJCA 89; AAU 84 of 2015 (the 6th of June 2019).**)

6. These two offences are founded on the same series of offences. Therefore, the Court finds it appropriate to impose an aggregate sentence according to Section 17 of the Sentencing and Penalties Act.
7. The Complainant had suffered a fracture on his shoulder blade with some other injuries during this unlawful episode carried out by you and your accomplices. Hence, I find the level of harm in this matter is materially significant.
8. Two of your accomplices went and grabbed the Complainant when he was inside the MaxValue supermarket in a degrading manner while the public was witnessing it. It is true that the Complainant did not obey one of your accomplices' request to stay outside of Vitivou until he concluded his duties inside the house. Instead, he ran away, taking his mobile phone, which was obtained from him and kept it inside the vehicle. However, the authority you were given as a Police Officer does not stretch, allowing you to unleash such violent behaviour on the Complainant. Hence, the level of culpability in this offending is high.
9. Considering the objective seriousness, the purpose of this sentence, the level of harm, and the culpability, it is appropriate in this case to have a starting point closer to the middle range of the tariff. I accordingly select three (3) years as the starting point.
10. I considered the objective impact of this offending on the public perception of the Police Force in evaluating its objective seriousness. I now take into consideration your individual subjective breach of trust reposed in you not only by the Police Force but also by the people of this country in committing this crime as an aggravating factor.

11. The learned Counsel for you submitted in detail your unblemished character in the mitigation submissions. Indeed, your previous good character was the main component in reposing you with such an important responsibility as a Police Officer, which you blatantly breached. Hence, your previous good character has little mitigatory value.
12. Accordingly, I increase one year for your aggravating factor to reach four years imprisonment and reduce one year for your previous good character. Your final sentence is now three (3) years imprisonment.
13. I now sentence you to three (3) years imprisonment as an aggregate sentence for one count of Acts Intended to Cause Grievous Harm, contrary to Section 255 (a) of the Crimes Act, and one count of Wrongful Confinement, contrary to Section 286 read with section 46 of the Crimes Act.
14. Considering your long career and contribution to the Fiji Police Force as submitted by the learned Counsel in the mitigation submissions and the chances for rehabilitation, I partly suspend your sentence. You shall serve eighteen (18) months of your sentence immediately, and the remaining period of eighteen (18) months is suspended for three (3) years.
15. Considering the time spent in custody (nearly three days), the actual period you have to serve in custody is **seventeen (17) months and twenty-seven (27) days**.
16. If you commit any crime during these three (3) years and are found guilty by the Court, you are liable to be charged and prosecuted for an offence according to Section 28 of the Sentencing and Penalties Act.

17. Thirty (30) days to appeal to the Fiji Court of Appeal.



A handwritten signature in black ink, consisting of a large, stylized 'R' followed by a smaller 'T' and a horizontal line.

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**Hon. Mr. Justice R. D. R. T. Rajasinghe**

**At Suva**

21<sup>st</sup> June 2024

**Solicitors**

Office of the Director of Public Prosecutions for the State.

Ravono & Raikaci Law for the 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> Accused.