

IN THE HIGH COURT OF FIJI

AT SUVA

[APPELLATE JURISDICTION]

CRIMINAL APPEAL NO. HAA 015 OF 2025

BETWEEN : **HENRY WAH ZOING SEETO**

AND : **STATE**

Counsel : **Appellant in Person**
Ms S Shameem for the State

Date of Hearing : **9 June 2025**

Date of Judgment : **9 June 2025**

JUDGMENT

[1] This appeal concerns the sentence only.

[2] On 10 March 2025, the Appellant pleaded guilty to one count each of Common Assault and Breach of a Domestic Violence Restraining Order (DVRO). On 24 March 2025, he was sentenced to a total term of 9½ months' imprisonment for the two offences.

[3] The offences occurred on 4 March 2025 in Toguru, Navua. At the time, the Appellant was 44 years old, and the victim was his former de facto partner. They had three children together, with the victim having custody while the Appellant retained access rights.

[4] On the day of the incident, the victim returned home after grocery shopping and found the Appellant outside, speaking with their two younger children. She chose not to engage with him, as a DVRO with standard non-molestation

conditions was in place. She went inside and asked her eldest daughter to call the younger siblings in.

- [5] After a short while, the daughter returned and informed her mother that the younger siblings had gone with their father to get burgers. When the Appellant returned later that evening to drop off the children, the youngest child refused to leave the vehicle, insisting on going with her father. The Appellant asked the victim to allow the child to stay with him, promising to bring her back the next day. The victim refused, and as she attempted to remove the child from the vehicle, the Appellant slapped her on the right cheek. He then took the two younger children with him.
- [6] The victim reported the incident to the police the same night. She was medically examined at Navua Hospital at approximately 11:30 pm, around two hours after the assault. The medical practitioner noted tenderness in her right ear and cheek.
- [7] The Appellant was arrested by the police. He admitted to the allegations and was formally charged. He appeared before the Navua Magistrates' Court, waived his right to legal representation and pleaded guilty to both charges. In mitigation, he expressed remorse for his actions. At the time of the offence, he was employed as a caretaker in Pacific Harbour.
- [8] The Magistrate provided written reasons for the sentence. Using the two-tiered approach, she initially set a 12-month imprisonment term as the starting point and then adjusted the sentence to reflect aggravating and mitigating factors, arriving at 10 months' imprisonment. A further 14-day reduction was applied to account for the Appellant's remand period.
- [9] The appeal was filed within the prescribed timeframe. Although the Appellant's written grounds of appeal were not clearly articulated, his main

argument was that the sentence imposed was excessive given the circumstances of the case.

[10] This argument has merit. The maximum sentence for common assault and breach of DVRO is 12 months' imprisonment.

[11] The Magistrate used the maximum term of 12 months as a starting point, which is typically reserved for the most serious type of offending. However, this case does not fall into that category, the assault consisted of a single slap, delivered in the heat of the moment when the Appellant's child insisted on leaving with him against the mother's wishes.

[12] After setting the 12-month starting point, the Magistrate increased the sentence by six months to account for aggravating factors, which she identified as follows:

- a. The victim was the Appellant's de facto partner.
- b. The victim sustained injuries.
- c. The assault occurred in front of the children.
- d. This was an incident of domestic violence.

[13] However, the Magistrate erred in considering the victim as the Appellant's de facto partner. The facts indicate that they had been separated for three years and were living in separate dwellings. While the offence was classified as domestic violence due to their former relationship, there was no ongoing relationship to justify treating it as an aggravating factor. Furthermore, the injury identified as tenderness was minor and should not have been considered an aggravating factor. The legitimate aggravating factors were that the assault took place in front of the children and that it constituted domestic violence.

- [14] The Magistrate referred to *State v Sokiveta* [2013] FJHC 407, in which De Silva J noted that common assault sentences are often suspended. However, in this case the Magistrate found no special reasons to suspend the sentence.
- [15] Additionally, the Magistrate failed to consider the Appellant's character. While the Appellant had previous convictions, they were all spent, with the last one dating back to 2012 for aggravated burglary. Since the birth of his children, he has made efforts to reform himself. Although he may not have been an ideal partner, there was no evidence to suggest that he was not a good father. In fact, the children appeared to have a close bond with him, as they were eager to spend more time in his company.
- [16] Given that the assault was minor, imposing an immediate custodial sentence of 10 months was excessively harsh. While deterrence is crucial in domestic violence cases, courts must also consider rehabilitation, especially when an offender takes full responsibility by entering an early guilty plea.
- [17] The Appellant has already served three months in prison, which is an adequate punishment.
- [18] The appeal is allowed. The sentence imposed by the Magistrates' Court is set aside and replaced with a three-month imprisonment term, effective from 24 March 2025.



Hon. Mr Justice Daniel Goundar

Solicitors:

Appellant in Person

Office of the Director of Public Prosecutions for the State