

**STATE v JOHN LASTERVICKER (HAC0042 of 2012B)**

HIGH COURT — CRIMINAL JURISDICTION

5 MADIGAN J

24, 26 July 2012

10 **Criminal law — sentencing — act intended to cause grievous harm — criminal intimidation — domestic violence — restraining order — aggravating factors — children present — effect of offence — guilty plea — remorse — Crimes Decree ss 256(1)(a), 375(1)(a)(i)(iv) — Domestic Violence Decree ss 23, 27, 28 — Sentencing and Penalties Decree s 4(3)**

15 The accused pleaded guilty to an act intended to cause grievous harm contrary to s 256(1)(a) of the Crimes Decree 2009 and criminal intimidation contrary to s 375(1)(a)(i)(iv) of the Crimes Decree. The victim was his de-facto wife who had refused to give him money for cigarettes. The accused hit the victim with a stick, kicked her and tied her up with a chain used to tie up the dog. He then set fire to some leaves in front of her and told her that if she refused him money for cigarettes again he would burn her alive. His two young daughters were present throughout the incident.

20 **Held –**

25 (1) The prevailing tariff is between six months and two years for this offence, dependent on the degree of provocation and the degree of injury inflicted. The inhumane treatment of the victim being tied with a dog chain is as serious as being badly beaten. The provocation was minimal, and the beating with a stick and kicking leads to a starting point of three years for this offence. The fact that the children were watching, and that the wife is no longer able to count on the moral and financial support of her husband and is now living elsewhere, are aggravating factors which add two years to the sentence. For the accused's plea of guilty and his remorse, two years are deducted, meaning that the accused will serve three years' imprisonment.

30 (2) Given that the criminal intimidation was part and parcel of the same incident and taking into account the plea of guilty, the accused is sentenced to two years for this offence, to be served concurrently with the first offence.

Accused sentenced to three years' imprisonment with two year non-parole period

**Cases referred to**35 *Tuigulagula* HAC 81/10, considered.*Mokobula* [2008] FJHC 164, considered.*M Fong* for the State.40 *Accused* in person.**Madigan J. Domestic Violence**

[1] The accused appeared in the Magistrates Court at Savusavu on the 19th instant where he entered a plea of guilty to the following offences

45 **First Count**

**ACT INTENDED TO CAUSE GRIEVOUS HARM:** contrary to s 256(1)(a) of the Crimes Decree 2009

**Particulars of Offence**

50 John Lastervicker on the 9th day of July 2012 at Savusavu in the Northern Division with intent to do some grievous harm to Alisi Draunimasi unlawfully wounded the said Alisi Draunimasi by kicking and hitting her with a stick.

**Second Count**

*CRIMINAL INTIMIDATION*: contrary to s 375(1)(a)(i)(iv) of the Crimes Decree 2009

*Particulars of Offence*

5 John Lastervicker, on the 9th day of July 2012 at Savusavu, in the Northern Division, without lawful excuse and with intent to cause alarm to Alisi Draunimasi, threatened the said Alisi Draunimasi with injury to her personally.

[2] The accused admitted a set of facts put to him and he admitted one previous conviction for larceny in 2006.

10 [3] The facts admitted by the accused are that the victim is his de-facto wife and they have two children of the relationship. At about 4pm in the afternoon of the 9th July the two argued and the ‘wife’ refused to give the accused money to buy cigarettes. The accused picked up a stick and hit the victim and then, wearing gumboots at the time, started kicking her. He then got a chain which was used to tie up the dog and tied her up with it. He thereafter collected some coconut leaves  
15 which he set fire to in front of her. He told her that if she refused money for cigarettes again he would burn her alive. The victim feared for her life and that of her two young daughters who were present.

20 [4] In mitigation before this Court, the accused tells me that he is 31 years old and his wife 19 years old. The two children are 3 and 1. He has been co-habiting with the victim for two years. He says he acted out of anger but is now very remorseful and asks for forgiveness. He works as a farmer earning about \$80 per week his wife and children have now gone to stay with her parents.

25 [5] This case is obviously a domestic violence matter, an issue not dealt with below, and before proceeding to sentence this Court, pursuant to s 23 of the Domestic Violence Decree makes a domestic violence restraining order for the safety and well-being of the wife and her children; the order being the standard non-molestation order in favour of the wife and children in terms of sections 27 and 28 of the Domestic Violence Decree

30 [6] The medical report provided shows bruising, tenderness and swelling to the victim’s body and in the opinion of the medical practitioner her ‘soft tissue injuries are secondary to blunt force’.

35 [7] Although the injuries to the victim in this case are not serious, it is nevertheless an extremely perturbing case. In response to the denial of funds to buy cigarettes this accused has beaten his wife with a stick, tied her up with a dog chain and threatened her with actual fire and the threat of fire. All in the purview of their two young children. His behavior towards his wife was undignified, humiliating and demeaning.

40 [8] The maximum penalty for act causing grievous harm is life imprisonment and as this Court said in *Tuigulagula* HAC 81 of 2010, acts causing harm to spouses have for a long time been rewarded with sentences that are far too lenient. In *Mokubula* [2008]FJHC164, Shameem J., after reviewing the authorities for the offence concluded that the prevailing tariff is between six months and two years; dependent on the degree of provocation and the degree of injury inflicted.

[9] I take the inhumane treatment of this victim being tied with dog chains as seriously as being badly beaten. The provocation was minimal (being denied money for cigarettes) and the beating with a stick and kicking, leads me to select a starting point for this offence of three years.

50 [10] Section 4(3) of the Sentencing and Penalties Decree requires, in a Domestic Violence situation, for the Court to have regard to .....

- (b) Whether a child or children were present when the offence was committed, and  
.....  
(d) The effect of the offence in terms of hardship, dislocation or other difficulties experienced by a victim.

5 [11] On the accused's own admission, the children were watching this whole  
incident 'from the hallway' and as they are very young it could have a lasting  
effect on them. In addition the wife is no longer able to count on the moral and  
financial support of her husband and is now living elsewhere. For these two  
aggravating factors I add a further two years to the sentence, bringing it to an  
10 interim total of five years imprisonment.

[12] For the accused's plea of guilty and his remorse, I deduct two years from  
that total, meaning that the accused will serve a term of imprisonment of three  
years.

15 [13] The maximum penalty for criminal intimidation under the section he has  
been charged with is five years imprisonment. (He could have been charged  
under the far more serious s 375(2)(a), but wasn't). In any event given that the  
intimidation was part and parcel of the same incident and in taking into account  
his plea of guilty I sentence the accused to two years for this offence, to be served  
20 concurrently with the first offence.

[14] The accused will serve three years imprisonment with a minimum term of  
two years before he can be considered for parole

*Three year sentence imposed.*

25

30

35

40

45

50