

IN THE MAGISTRATE COURT OF FIJI
AT RAKIRAKI
CRIMINAL JURISDICTION

CRIMINAL CASE NO. 163/13

BETWEEN: **THE STATE**

AND: **JOSUA NAKATASAVU**

Prosecution: **Cpl Chin Samy**

Accused: **In Person**

SENTENCE

1. Josua Nakatasavu you pleaded guilty to the offences of Breach of Bail Condition contrary to section 25(1)(b) and 26(1) of the Bail Act Number 26 of 2002 and Bail Amendment Decree No. 28 of 2012 and Common Nuisance contrary to section 376 of the Crimes Decree No. 44 of 2009.
2. You admitted that you were not forced to plead guilty to the charge and that you pleaded voluntarily.
3. The Court after being satisfied that your guilty plea was unequivocal convicted you as charged.
4. The facts are you were bailed by this Court in criminal case number 136/13 and part of your bail condition was not to interfere with witness except for purpose of reconciliation. However on 1st June 2013 you failed to comply with the said condition. You saw the complainant Chandar Shekar (whose also complainant in CF 136/13) waiting at the bus shelter and swore at him, warned him and also showed a clenched fist at him.
The matter was reported to police. You were arrested, interviewed under caution and charged accordingly.
5. You mitigated and the only mitigating factor in your favour is your early guilty plea and time in custody.
6. The prescribe penalty for the offence of Breach of Bail under the Bail Act is a maximum imprisonment term of 12 months or \$2,000.00 fine. In the Courts opinion the tariff would be 1 month – 9 months imprisonment

or suspended sentence depending on the circumstances of each individual case.

7. Under the Crimes Decree no. 44 of 2009, the prescribed penalty for Common Nuisance under section 376(1) (b) is a maximum imprisonment term of 1 year.
8. The tariff for the said offence in my view would be 1 month – 6 months imprisonment. The exact sentence to be determined after consideration of the aggravating and mitigating factors.
9. In light of the circumstances of offending in this case, for the offence of Breach of Bail I commence my sentence at 6 months imprisonment.
10. I don't see any aggravating features accept what is subsumed in the elements of the offence.
11. For the time you've spent in custody I reduce your sentence by 1 month. Considering your guilty plea I further reduce your sentence by 2 months. Your final sentence is 3 months imprisonment.
12. For the offence of Common Nuisance I commence your sentence at 6 months. The offence is prevalent in community. For that I increase your sentence by 1 month. For your time in custody I reduce your sentence by 1 month and for your guilty plea I further reduce your sentence by 2 months, your final sentence is 4 months imprisonment.
13. Your final sentence as follows:
 - Breach of Bail – 3 months imprisonment.
 - Common Nuisance – 4 months imprisonment.
14. The offences were committed in the same transaction hence both sentences are to be served concurrently.
15. I now consider whether your sentence should be suspended. This is not your first offence. I note that in 2005 you were given a non- custodial sentence for an offence of Grievous Harm at Lautoka Magistrate Court. You cannot expect the leniency of the court and there are no exceptional circumstances to suspend your sentence.
16. You will serve an immediate imprisonment term of 4 months.
17. 28 days to appeal.

Samuela Qica
Resident Magistrate

26th June 2013