

IN THE MAGISTRATES' COURT OF FIJI
AT TAVUA
CRIMINAL JURISDICTION

Criminal Case No: 298 - 2018

STATE

-v-

SEKARAIA TELAWA NASARA NABARO

Before : RM Fotofili L.
For Prosecution : WPC Chand A. [Police Prosecution]
Accused : Mr Samy A. [Legal Aid Commission]
Date of Sentence : 27th August 2019

PUNISHMENT

1. The prosecution initially preferred 2 counts of offences against you.
2. The 1st count alleged that you resisted arrest contrary to section 277 (b) of the **Crimes Act 2009**. It was alleged you resisted the arrest of PC Semi who was lawfully executing his duty on the 13th of October 2018 at Tavua.
3. On the 20th of May 2019 the prosecution offered no evidence in relation to the 1st count and I have acquitted you of that count pursuant to section 178 of the **Criminal Procedure Act 2009**.
4. The 2nd count of breaching your bail condition remains.
5. You have pleading guilty to the 2nd count which I restate as follows:

Count 2

Statement of Offence

BREACH OF BAIL CONDITIONS: Contrary to section 25 (1) (c) and 26 (1) of the Bail Act No. 26 of 2000 and Bail Amendment Act No: 28 of 2012.

Particulars of Offence

SEKARAIA TELAWA NASARA NABARO on the 13th day of October, 2018 at Tavua in the Western Division being bailed by Tavua Magistrate Court vide 286/18 breached by not remaining indoors, a condition imposed by Tavua Magistrate Court on 08/10/18.

6. I am satisfied that your guilty plea is voluntary and that you understand the consequences of your plea. The evidence tendered in support of your guilty plea supports your plea.
7. I am aware and familiar with your substantive case Tavua CF 286 – 18 (a damaging property case to which you have pleaded guilty to and sentenced) and I have taken judicial notice of the records in that file particularly your bail condition in that you were to be indoors or observing a curfew between 7pm to 6am daily. I imposed that condition on you on the 8th of October 2018 which is the first day you appeared for your damaging property case.
8. There is no evidence that you had lawful justification for breaching your curfew. When you breached your curfew, you were 17 years old at the material time.
9. I have entered a finding of guilt against you.
10. Police were on patrol at about 8.30pm and noticed you standing beside a bank in town with a group of boys. You saw police and ran away and you were arrested at Ralulu Street. You struggled during the arrest and had to be overpowered. The smell of liquor emanated from you.
11. You were later interviewed under caution by police in the presence of your mother. You remained silent when questioned about breaching your curfew.
12. You had no previous conviction at the time.
13. Despite your pending case for CF 286 – 18, I still released you on bail. You were later produced for another fresh charge on the 21st of January 2019 for a case of assault causing actual bodily harm CF 298 – 19. You had to be remanded in custody as there were strong indications that you will likely misbehave if released. I will not consider any time you may have spent in remand as time served.
14. It is submitted in your mitigation that you 17 years old at the material time and is now 18 years old. You have learnt your lesson and promise not to reoffend. You

want to support your parents. You have cooperated with police. You have pleaded guilty early. You want to continue your studies if released.

MAXIMUM PUNISHMENT

15. The maximum sentence that is imposable by law for breaching a bail condition is a fine of up to \$2,000 and or imprisonment up to 12 months.
16. You were 17 years old or under 18 years old at the material time or you were a juvenile. You will be treated as such in this sentence despite attaining the age of 18 years old.
17. The law says that you cannot be imprisoned for more than 2 years because of your age at the time.

PUNISHMENT RANGE

18. The tariff for breaching a bail condition and absconding bail are the same. It is between a suspended sentence to 9 months imprisonment [see for example - Ulumatai v State [2019] FJHC 114; HAA90.2018 (22 February 2019)].
19. The High Court has said that 'wilful failure and disobedience of Court Orders and flagrant disregard of rule of law must be met with appropriate sentence.' [Namua v State [2008] FJHC 106; HAA025.2008 & HAA026.2008 (15 May 2008)].
20. Amongst other sentencing options, the Juveniles Act 1973 at section 36 and the Sentencing and Penalties Act 2009 particularly section 15 is helpful in deciding what punishment you deserve.

STARTING POINT

21. Considering the circumstance of your case, I select a 1 month imprisonment term as a starting point.

AGGRAVATING FEATURE

22. You ran away police when they came to arrest you.
23. You were granted bail with the curfew imposed on you on the 8th of October 2018. You breached your condition 8 days later which I consider to be within a short time.
24. I increase your sentence to 2 months and 14 days imprisonment.

MITIGATION

25. You are a first offender.
26. You are young.
27. You are remorseful.
28. You have cooperated with police during your interview.
29. You wish to resume your studies.
30. Your sentence is reduced to 1 month imprisonment.

GUILTY PLEA

31. Your guilty plea is early.
32. I will reduce your sentence to 15 days imprisonment.

SUSPENDED SENTENCE

33. I can suspend your sentence pursuant to section 26 (1) and (2) (b) of the **Sentencing and Penalties Act 2009** either wholly or in part.
34. Your sentence will be aimed at deterrence and to punish you adequately.

SUMMARY

35. As explained, no time spent in remand will not be considered as time served.
36. You are sentenced to 15 days imprisonment.
37. It will be suspended in part.
38. 7 days imprisonment will be held in reserve for the next 9 months.
39. Do not commit any other offence punishable with imprisonment in the next 9 months or this 7 days imprisonment may be activated.
40. You will serve 8 days imprisonment immediately.
41. 28 days to appeal your sentence to the High Court if you are dissatisfied with your sentence.



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Lisiate T.V. Fotofili
Resident Magistrate

Dated at Tavua this 27th day of August 2019