

**IN THE MAGISTRATES' COURT OF FIJI
AT TAVUA
CRIMINAL JURISDICTION**

Traffic Criminal Case No: 08 - 2020

STATE

-v-

SAVENACA BOLA

Before : RM Lisiate Fotofili
For Prosecution : WPC Chand A. [Police Prosecution]
Accused : In Person, Waived Right To Counsel
Date of Sentence : 7th July 2020

SENTENCE

1. **SAVENACA BOLA**, you have pleaded guilty to the following charge:

Statement of Offence

DRIVING MOTOR VEHICLE WHILST THERE WAS PRESENT IN THE BLOOD A CONCENTRATION OF ALCOHOL IN EXCESS OF THE PRESCRIBED LIMIT: Contrary to section 103 (1) (a) and 114 of Land Transport Breath Test and Analysis Regulation 2000.

Particulars of Offence

SAVENACA BOLA on the 5th day of June, 2020 at Tavua, in the Western Division, drove a motor vehicle registration number IO 687 on Vatukoula Road, Tavua under the influence of alcohol whilst there was present in 100 millilitres of his breath a concentration of 92 mg of alcohol which is equivalent to 202.4 mg of alcohol present in his blood which was in excess of the prescribed limit.

2. 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 and your admission, supports your guilty plea.

3. I find you guilty and convict you of the charge.
4. Around 5.30 pm, police received information that the vehicle driven by the defendant was being driven under the influence of liquor. Police attended to the report and stopped the defendant's vehicle at the 'PWD' depot. The attending police officer approached the defendant and noticed the heavy smell of liquor emanating from the defendant and noticed that the defendant had blood shot eyes. The defendant was informed of his rights and was advised to get off the vehicle. The defendant was then taken to the police station. The defendant's breath was tested on dragger machine 7110. The result showed that the defendant had 92 micrograms of alcohol in 100 millilitres of his breath.
5. The defendant was then interviewed under caution by police about 15 hours later. The defendant admitted having a valid driving license. The defendant owns the vehicle he was driving on that day. The defendant had come to town to buy some alcohol. There were 4 bottles of methylated spirit in the vehicle he was driving when police stopped him. The defendant admitted drinking liquor [Joskes] with some relatives before offering to drop his relatives on his way back home. The defendant apologized for what he did as it will tarnish his reputation and that of his family.
6. The reading on a breath analysing instrument in microgrammes of alcohol per 100 millilitres of breath is to be multiplied by 2.2 in order to arrive at the number of milligrams of alcohol in 100 millilitres of blood [section 3 (3) of the **Land Transport (Breath Tests and Analyses) Regulations 2000**].
7. The legal limit for the defendant and his license class is 80 milligrams of alcohol in 100 millilitres of blood [section 3 (1) of the **Land Transport (Breath Tests and Analyses) Regulations 2000**].
8. After calculation, it is established that the defendant had 202.4 milligrams of alcohol in 100 millilitres of his blood.
9. The defendant exceeded the legal limit by approximately 122.4 milligrams.
10. The defendant is a first offender.
11. The defendant did not spend any time in remand.
12. The defendant is 45 years old. He is married and has 9 children to support. The eldest is 21 years old and the youngest is 2 years old. The defendant is working for a government department as an estate officer. The defendant earns \$680 fortnightly. He apologizes.

13. The prosecution is unsure of what has happened to the 4 bottles of methylated spirit that was seized from inside the defendant's vehicle.
14. I cannot make any order and I reserve any order for the return, release or disposal of this pursuant to section 155 (1) unless further information is provided.

MAXIMUM SENTENCE

15. For a first offence of driving a vehicle whilst there was alcohol in the defendant's breath above the prescribed limit, the law allows a court to impose a fine which can be up to \$2,000 and or imprisonment up to 2 years.
16. It is mandatory that the defendant is to be disqualified from holding or obtaining a driving license anytime between 3 months even up to 2 years.

SENTENCING RANGE or SENTENCING TARIFF

17. The courts have not set any sentencing preference or tariff for this offence so the final sentence in each case will be determined by the circumstance of each case within the punishment prescribed by statute.
18. The **Sentencing and Penalties Act 2009** particularly section 4 (but not limited to) will guide me when deciding the defendant's sentence.

Starting Point

19. Based on the objective seriousness of the offence, I select a starting point of 3 months imprisonment.

Aggravating Factor

20. I find that the defendant exceeded the legal limit by a high amount.

21. I do not find the distance the defendant drove to be lengthy, however he was driving around the populated area of Tavua town in his intoxicated state.
22. I increase his sentence to 5 months imprisonment.

Mitigating Factors

23. The defendant is a first offender.
24. He is remorseful.
25. He cooperated with police when interviewed.
26. The defendant has a family to support.
27. I reduce his sentence is 3 months imprisonment.

Guilty Plea

28. The defendant has pleaded guilty early.
29. I reduce his sentence to 2 months imprisonment.

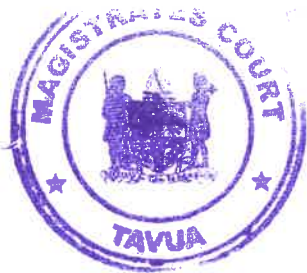
Suspended Term and Disqualification

30. I can suspend the defendant's sentence whether in whole or in part pursuant to section 26 (1) and (2) (b) of the **Sentencing and Penalties Act 2009**, if his sentence does not exceed 2 years imprisonment.
31. The defendant's sentence will be aimed at deterrence and is to punish him adequately.
32. For driving with excess alcohol in the blood, it is not optional whether there should be disqualification from holding or obtaining a driving license. The law says that it is mandatory. The primary issue is the length of disqualification.
33. The length of time a person can be disqualified can be determined by assessing the standard of driving shown, any previous traffic violations, the need to protect the

public from dangerous or drunk drivers, good character of the defendant and whether there is any serious hardship to the family and whether driving is a source of income [State v Joel Sahai Case No. HAAR 002 of 2017 (29th August 2017)].

SUMMARY

34. **SAVENACA BOLA**, no further reduction will be made to your sentence as you did not spend any time in remand.
35. You are sentenced to 2 months imprisonment.
36. I am inclined to suspend your imprisonment term and it will be suspended in whole for the next 1 year.
37. Do not commit any other serious offence or offence punishable with imprisonment in the next 1 year.
38. If you do, this 2 months imprisonment held in waiting maybe activated.
39. You are disqualified from obtaining or holding a driving license for the next 3 months [surrender your license immediately].
40. A fine is also appropriate here.
41. You are also ordered to pay a fine of \$150 and that is to be paid in 28 days. You default and you risk up to 5 days imprisonment.
42. I will give the defendant a date here after to review whether this fine has been paid.
43. 28 days to appeal if any party is dissatisfied with the sentence.



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Lisiate T.V. Fotofili
Resident Magistrate

Dated at TAVUA this 7th day of July, 2020