

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

Criminal Case No: 146 - 2018

STATE

-v-

LEVENI TUI

Before : RM Fotofili L.
For Prosecution : WPC Priya P. [Police Prosecution]
For the Defendant : Mr. Samy A. [Legal Aid Commission]
Date of Sentence : 13th January 2020

SENTENCE

BACKGROUND

1. **LEVENI TUI** you have pleaded guilty to the following charge:

Statement of Offence

COMMON ASSAULT: Contrary to section 274 of the *Crimes Act No. 44 of 2009*.

Particulars of Offence

LEVENI TUI on the 25th day of April, 2018 at Nadala, Vatukoula in the Western Division unlawfully assaulted **JOANA WATI**.

2. I am satisfied that your guilty plea is voluntary and that you understand the consequence of your plea. Amongst other things, the evidence tendered in support of your guilty plea and your admission in court supports your guilty plea.
3. I have found you guilty and I convict you of the charge accordingly.
4. The victim here is your 40 year old wife. You two were on the roadside waiting for a transport and that is when you two argued about a phone. You then punched your wife several times on the head.

5. You were later arrested and interviewed by police. You admitted punching her head 2 times during the argument about the phone. Your wife ran home after you punched her. You said that she makes you angry and you are fed up.
6. I will not consider any time you have spent in remand as time served. You are fortunate to have been bailed at all. You have several assault cases pending in relation to the same victim [see for example Tavua CF 55 – 15 and CF 97 – 17].
7. You are not a first offender. You were convicted and sentenced to 4 months imprisonment in Tavua CF 199 -17 on the 19th of December 2017 for assaulting and causing injuries to the same victim.
8. You are 40 years old. You have 4 children. The youngest is 11 years old. You are a farmer and the sole breadwinner. The victim, your wife still resides with you. You seek a non-custodial sentence.

LAW

9. The maximum sentence that is imposable by law for the offence of common assault is up to 1 year imprisonment.

TARIFF

10. There is no set sentencing tariff for this offence.
11. However, suspended sentences have been deemed appropriate [State v Sokiveta [2013] FJHC 407; HAC 12.2013 (8th August 2013) .
12. Ultimately and amongst other things, your sentence will be determined according to the circumstance of the case, your individual circumstance, the Sentencing and Penalties Act 2009 and the maximum sentence imposable.

STARTING POINT

13. In light of the objective seriousness of the offence, I select a starting point of 1 month imprisonment.

AGGRAVATING FEATURES

14. This was your wife or there was a domestic relationship in existence.
15. You punched her on the head twice.
16. The violence was in public.
17. Your sentence is increased to 4 months imprisonment because of these.

MITIGATION

18. You are remorseful.
19. I accept that you must have been frustrated at the time.
20. You have a family to support.
21. You have cooperated with police during your interview.
22. Your sentence is reduced to 2 months imprisonment.

GUILTY PLEA

23. For pleading guilty early, I reduce your sentence to 1 month and 7 days imprisonment.

SUSPENSION and OBJECTIVE

24. I can suspend your imprisonment term pursuant to section 26 (2) (b) of the **Sentencing and Penalties Act 2009** whether in part or in whole.
25. Your sentence will be aimed at deterrence, denunciation and to punish you adequately.

SENTENCE

26. Your sentence is 1 month and 7 days imprisonment.
27. As I have explained, I will not consider any time you have spent in remand as time served.
28. I am not inclined to suspend your sentence whether in part or in whole.
29. I am aware of your sentences passed today in Tavua CF 55 – 15 and CF 97 – 17. I have also considered the totality principle and one transaction rule.
30. You will serve your 1 month and 7 days imprisonment consecutive to your other sentences.
31. Multiple DVRO is not required. One should be sufficient. A DVRO with section 27 standard non-molestation conditions has been imposed on you and is still in force in Tavua CF 199 -17. The DVRO was finalised on you when you received your sentence on the 19th of December 2017.
32. You have 28 days to appeal to the High Court if you are dissatisfied with your sentence.



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Lisiata T.V. Fotofili
Resident Magistrate

Dated at TAVUA this 13th day of January, 2020.