

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

Traffic Criminal Case No: 07 - 2020

Criminal Case CF 123 - 2020

STATE

-v-

ROHIT RAKESH CHAND

Before : RM Lisiate Fotofili
For Prosecution : A/CPL Chand A. [Police Prosecution]
Accused : Ms Henao G. [LAC]
Date of Sentence : 23rd February 2021

SENTENCE

1. **ROHIT RAKESH CHAND**, this sentence is for both your pending 2 files before me Rakiraki Traffic 07 – 2020 and Rakiraki CF 123 – 2020. Both files are related.
2. In Traffic 07 – 2020, 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 the Land Transport Breath Test and Analysis Regulation 2000.

Particulars of Offence

ROHIT RAKESH CHAND on the 2nd day of April, 2020 at Tavua in the Western Division, drove a motor vehicle registration number CK 081 on Nadelei Road, Vuqele, Vatukoula whilst there was present in 100 millilitres of his blood a concentration of 141 milligrams of alcohol which was in excess of the prescribed limit.

3. 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.
4. I find you guilty and convict you of the charge.
5. It was around 10.20pm when police were on mobile patrol covering the area of Koro No.2, Vatukoula. You were driving your vehicle at the time and you passed the police vehicle. The police vehicle stopped but you did not. Your vehicle 'scratched' the right side panel of the police vehicle. Police followed your vehicle right down to your residence. You got off the vehicle there staggering and you could not walk properly. The smell of liquor also emanated from you. You were arrested and taken to the Police Station.
6. Your breath could not be tested as you were struggling to blow into the breathalyser machine. You consented to have your blood tested instead. A sample of your blood was taken at the Tavua Hospital and has been analysed by the Fiji Police Forensics Chemistry Laboratory. The principal scientific officer verifies that you had 141 milligrams of alcohol per 100 millilitres of your blood.
7. You were interviewed under caution by police over a day from the time of your arrest. You have a valid driving license. You have been driving for 30 years. You voluntarily admitted that you were drinking grog and then you drank beer. You drank about 6 bottles of beer. You finished drinking around 10pm. You then drove your vehicle to drop a cousin. You said that you were okay. You admitted seeing the police vehicle stop on the road side. You went past and you felt that the right side mirror of your vehicle touched the police vehicle. You kept driving. You were taken to the police station. You have asthma and you were taken to the hospital.
8. For your license class, the legal limit is 80 milligrams of alcohol in 100 millilitres of blood [section 3 (1) of the Land Transport (Breath Tests and Analyses) Regulations 2000].
9. For your license class, you exceeded the legal limit by 61 milligrams.

10. In Rakiraki CF 123 – 2020, you have pleaded guilty to:

Statement of Offence

DISOBEDIENCE OF LAWFUL ORDER: Contrary to section 202 of the Crimes Act of 2009.

Particulars of Offence

ROHIT RAKESH CHAND on the 2nd day of April, 2020 at Koro No. 2, Vatukoula in the Western Division, disobeyed the lawful orders of the Permanent Secretary of the Ministry of Health and Medical Services acting in public capacity and duly authorized in that behalf by breaching the curfew hours.

11. 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.
12. I find you guilty and convict you of the charge.
13. You had not lawful justification to be outdoors at the material time.
14. I take judicial notice of the existence of the Novel coronavirus (2019-nCoV) and amongst other things, the imposition of a curfew by the Permanent Secretary which the Secretary is empowered to do pursuant to section 69 (3) (v) of the **Public Health Act 1935** to combat the spread of this pandemic.
15. According to Gazette number 32 legal notice number 406, a curfew was ordered by the Secretary to be in effect nationwide and was to be in effect from the 30th of March 2020. The curfew was in place between 10pm until 5am daily. Those travelling for the purposes of work, seeking medical care or an emergency were exempted.
16. You breached the lawful order of the Permanent Secretary when you were driving your vehicle around 10.20pm in the area of Koro No.2, Vatukoula. You were under the influence of alcohol at the time and which is the subject of your traffic file Rakiraki 07 -20.
17. You were interviewed once by the police in relation to this allegation of disobeying a lawful order and the allegation in your traffic file.
18. You have no previous conviction and no adverse traffic violation.

19. You have not spent any time in remand.
20. You are 49 years old. You earn \$100 weekly. You are married. You have 2 adult children. You are the sole breadwinner. You are asthmatic. You spent 4 days in police custody in relation to both the cases or allegations. You seek forgiveness.

MAXIMUM SENTENCE

21. For a first offence of driving a vehicle whilst there was alcohol in the your blood above the prescribed limit, the law allows a court to impose a fine which can be up to \$2,000 and or imprisonment for up to 2 years.
22. It is mandatory that you must be disqualified from obtaining or holding a driving license anytime between 3 months even up to 2 years.
23. For disobeying a lawful order, section 202 of the **Crimes Act 2009** prescribes that the defendant can be imprisoned for up to 2 years if there is no other specific punishment provided, for the disobedience.
24. For breaching a COVID restriction under the Public Health Act and Regulation, there is a specific punishment prescribed.
25. The maximum sentence imposable pursuant to the **Public Health (Infectious Diseases) Regulations 2020** Legal Notice 26 of 2020 is a fine not exceeding \$10,000 and or imprisonment not exceeding 5 years.

AGGREGATE SENTENCE

26. The offences in both your files were committed in the course of the same transaction or founded on the same facts.
27. Pursuant to section 17 of the **Sentencing and Penalties Act 2009**, I will impose an aggregate sentence on you for the offences in both files.
28. Since breaching the COVID restriction is the more serious of the offences, that will be used as the foundation when passing your aggregate sentence.

SENTENCING RANGE or SENTENCING TARIFF

29. It may be worthwhile considering some of the sentences imposed on offenders who disobeyed lawful orders contrary to section 202 of the Crimes Act 2009 or the Penal Code Cap 17 where the general maximum sentence imposable is up to 2 years imprisonment.
30. A person who was operating his vehicle on hire, had parked his vehicle at a public parking spot. He was ordered to move his vehicle by a police officer but the person refused. The driver was arrested and later convicted by a Magistrate's Court for breaching a lawful order and sentenced to pay a \$200 fine [Sattar v State [2000] FJHC 150; Criminal Appeal 83 of 1999 (10 January 2000)]. His appeal was unsuccessful. The sentence was passed when the Penal Code Cap 17 was in force. The punishment of up to 2 years imprisonment was the same under the repealed Penal Code Cap 17.
31. In State v Mataiasi Kalou Tavua CF 311 – 18, Mr. Kalou was not supposed to be driving and was disqualified from driving due to his earlier traffic offence for driving with excess alcohol in his blood above the legal limit. Within 5 days of being disqualified, Mr. Kalou was seen driving again in town. Mr. Kalou was sentenced to 2 months and 5 days imprisonment. He was ordered to serve 19 days imprisonment and the remainder of his imprisonment term was suspended for 18 months imprisonment.
32. In State v Umesh Prasad High Court Criminal Review HAR 02 of 2019 (27th April 2020), the High Court said that generally, suspended terms of imprisonment even up to 6 months imprisonment can be imposed for disobedience of a lawful order which attracts up statutory maximum of up to 2 years imprisonment. On review by the High Court, Mr. Umesh Prasad was fined \$300 to be paid in 60 days. In justifying a fine, the High Court had found that Mr. Prasad's breach in interfering in judicial proceedings even though he was a court officer was an administrative one and that some time had elapsed since the inception of the case.
33. In State v Arieta Marama Tavua CF 119 – 20, Ms Marama had come to town at about 10.15pm to buy eggs as she was hungry. She was supposed to be indoors at 10pm due to the national curfew. She was sentenced to 7 days imprisonment which was wholly suspended for 12 months. She was also ordered to pay a fine of \$50. She had spent some time in remand and so the court did not require her to serve her suspended term or pay her fine.

34. More recently, for breaching COVID-19 restrictions:
35. In State v Ropate Sokia Rakiraki CF 110 – 20, Mr. Sokia had returned from Suva in a delivery or transport truck and was arrested at a police checkpoint at around 12pm when the national curfew was in place. Mr. Sokia was not formally employed by the Company which owned the truck. He had accompanied the driver of the truck who was also his cousin to help his cousin with the tarpaulin of the truck. Mr. Sokia was ordered to complete 20 hours of community work.
36. In State v Qica Puamau and 4 Others Rakiraki CF 256 – 2020, the defendants were riding on horseback around midnight and shouting profanities at villagers. The adult defendants were sentenced with up to 10 days imprisonment and the juveniles had no-convictions recorded but were ordered to complete 20 hours of community work.
37. In State v Mustaq Salman Ali Rakiraki CF 132 – 2020 and Traffic 07 – 2020, Mr. Ali had also breached the COVID restrictions. He was driving and stopped by police at a checkpoint 10 minutes after the curfew was in place. He was also driving with excess alcohol in his blood above the legal limit. He had exceeded the legal limit by 109 milligrams. He pleaded guilty. He was a first offender. He was sentenced to complete 35 hours of community work and he was disqualified from obtaining or holding a driving license for 3 months.
38. 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)].
39. I can suspend your sentence whether in whole or in part pursuant to section 26 (1) and (2) (b) of the Sentencing and Penalties Act 2009, as long as your sentence does not exceed 2 years imprisonment.
40. For driving with excess alcohol in the blood, it is not optional whether you should be disqualified from driving or disqualified from holding or obtaining a driving license. The law says that it is mandatory. The primary issue is the length of disqualification.
41. The length of time a defendant can be disqualified from driving 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)].

42. For community work, if the offence is punishable with 2 years or more, you can be ordered to complete between no less than 20 hours of community work with up to 400 hours of community work [section 3 (2) (a) of the Community Work Act 1994.
43. However, a court shall not sentence a person to community work unless:
- a. The offender consents;
 - b. The court is satisfied that the offender is a suitable person to perform the community work;
 - c. That community work is available and;
 - d. There are satisfactory arrangements for the supervision of that person's performance of the work

[section 4 (a) (b) (i) (ii) (iii) of the Community Work Act 1994].

44. All of the above factors must be present or met.

INSTINCTIVE SYNTHESIS APPROACH

45. **ROHIT RAKESH CHAND**, particularly because there is no sentencing tariff for breaching COVID restrictions, I will adopt an instinctive synthesis approach when sentencing you.
46. There are some significant factors in your case which I will emphasise before pronouncing your final aggregate sentence.
47. There is no evidence before me regarding the value of any damage you may have caused to the police vehicle which is public property. However, I am certain that you were driving carelessly at the time as your vehicle grazed the side of the police vehicle. You were driving and exceeded the legal limit of alcohol that was supposed to be in your blood by 61 milligrams.
48. However, you are a first offender. You cooperated with police during your interview. You are remorseful. You are asthmatic but this needs to be considered with reserve because of the amount of self-induced intoxication you put yourself through. I accept that you have spent 4 days in police custody.

49. You have pleaded guilty early.
50. There will be no reduction in your sentence for any time spent in remand as you have been bailed since the inception of your cases.

SUMMARY

51. **ROHIT RAKESH CHAND**, your sentence will be aimed at deterrence and is to punish you adequately.
52. You will receive an aggregate sentence for both your files.
53. I do not think that you are a suitable candidate for community work. You have not volunteered or given consent.
54. I am satisfied that imprisonment is warranted. But it will not be immediate particularly as you have been in police custody for 4 days.
55. You are sentenced to an aggregate 10 days imprisonment. However, this will be wholly suspended for the next 12 months.
56. Do not commit any other serious offence or offence punishable with imprisonment in the next 12 months because you risk having this 10 days imprisonment that is held in waiting being activated.
57. You are fined \$120 and this is to be paid in 28 days.
58. You default and you risk up to 4 days imprisonment.
59. You will be given a date hereafter to review whether you have paid your fine.
60. Your bail and bail conditions will be extended until your fine is paid.
61. You are also disqualified from driving or obtaining or holding a driving license for the next 3 months.
62. You are to surrender your license immediately.
63. You can collect your license from the court registry within 3 months from today.

64. 28 days to appeal if any party is dissatisfied with the sentence.



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Lisiate T.V. Fotofili
Resident Magistrate

At TAVUA this 23rd day of February, 2021