

IN THE MAGISTRATES' COURT OF FIJI
AT TAVUA
CRIMINAL JURISDICTION

Criminal Case No: 121 - 2020

STATE

-v-

TEVITA GAUNAVOU TIKOMAILUTU – 1st Defendant

VILIKESA NAIKADAWA – 2nd Defendant

Before : RM Fotofili L.
For Prosecution : A/CPL Chand A. [Police Prosecution]
Accused : In Person, Both Waived Right To Counsel
Date of Sentence : 16th February 2021

SENTENCE

1. **TEVITA GAUNAVOU TIKOMAILUTU and VILIKESA NAIKADAWA**, both of you have pleaded guilty to the following charge:

Statement of Offence

FAILURE TO COMPLY WITH ORDER: Contrary to section 69 (1) (c) of the Public Health Act, 1935 and Regulation 2 of the Public Health [Infectious Diseases] Regulation 2020.

Particulars of Offence

TEVITA GAUNAVOU TIKOMAILUTU and VILIKESA NAIKADAWA on the 4th day of April, 2020 at Vatukoula in the Western Division, without lawful excuse, was found on Church Road, Vatukoula and failed to comply with hours of curfew imposed by the Permanent Secretary For Health and Medical Services that was deemed necessary for the protection of the public health from an infectious disease namely Novel Coronavirus.

2. I am satisfied that both of you understand the consequence of your plea and that both your pleas of guilty is voluntary. Both of you have also made admissions in court and admitted the facts proposed by the prosecution.
3. There was no lawful justification for either of you to be outdoors at about 9pm.

4. I find both of you guilty and convict you of the charge.
5. 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.
6. According to the Government of Fiji Gazette NO. 32 of 2020 Public Notice No. 10, a curfew was ordered by the Secretary to be in effect nationwide and was to be in effect from the 3rd of April 2020. The curfew was for 8pm until 5 am daily. Those travelling for the purposes of work, seeking medical care or an emergency were exempted.
7. On the 4th of April 2020, both of you were supposed to be indoors between 8pm to 5am pursuant to the order of the Permanent Secretary.
8. Around 9pm both of you were outside walking on Church Road, Vatukoula. Both of you had returned from consuming kava at Matanagata. Police who saw both of you on the road, arrested you two and you were escorted to the Tavua Police Station and later interviewed under caution.
9. **TEVITA GAUNAVOU TIKOMAILUTU** in your caution interview with the police, you admitted that you reside at low cost, Vatukoula. You admitted you were at Church Road after returning from drinking grog at Matanagata around 9pm. You admit drinking liquor too and that is why you were late. You knew you breached the curfew.
10. **TEVITA GAUNAVOU TIKOMAILUTU** this is your first offence.
11. You have not spent any time in remand.
12. You are 36 years old. You are married and you have 3 children, aged 10 years, 6 years and 5 years respectively. You are married. You just started working as a welder and fabricator. You work in the weekends. You understand that you broke the law. You seek forgiveness. You consent to community work.
13. **VILIKESA NAIKADAWA** in your caution interview with the police, you admitted that you were drinking grog. You left for home around 9pm after drinking liquor. You apologise for what you have done and you say that you have learnt your lesson.
14. **VILIKESA NAIKADAWA** this is your first offence.
15. You have not spent any time in remand.

16. You are 35 years old. You are married and you have 3 children, aged 8 years, 7 years and 5 years respectively. You work at the mine doing smelting work or as a metal worker. You also work in the weekends. You admit the offence. You seek forgiveness and you apologise. You consent to community work.

LAW

17. 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.

TARIFF

18. I have been unable to find any tariff for this offence understandably because this is a novel area.
19. 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 maximum sentence imposable is up to 2 years imprisonment.
20. 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**.
21. 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.
22. 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

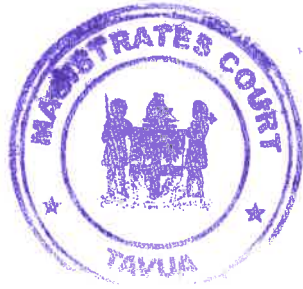
attracts up statutory maximum of up to 2 years imprisonment. On review by the High Court, Mr. Umesh Prasad was fined \$300 to be paid in 60 days. In justifying a fine, the High Court had found that Mr. Prasad's breach in interfering in judicial proceedings even though he was a court officer was an administrative one and that some time had elapsed since the inception of the case.

23. More recently, for breaching COVID-19 restrictions:
24. 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.
25. 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.
26. 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.
27. 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)].

INSTINCTIVE SYNTHESIS APPROACH

28. Primarily due to there being no sentencing tariff established for breaching COVID-19 restrictions, I will adopt an instinctive approach when sentencing both of you.
29. I do not see any aggravating feature in your case.
30. Both in your favour, both of you are first offenders, being remorseful, cooperated with police when interviewed and you have a family to support.
31. I also take into account that both your guilty pleas are early.

42. If you default in paying your fine, each of you risk up to 2 days imprisonment.
43. Your bail will be extended until your respective fine is paid.
44. 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 16th day of February, 2021.