

IN THE RESIDENT MAGISTRATE'S COURT
AT SUVA -CRIMINAL DIVISION

Criminal Case No. 1565 of 2013

BETWEEN : Director of Public Prosecutions

Prosecution

AND : Vijendra Goundar (a.k.a Sonu)

Accused

For Prosecution : Ms.J.Prasad (**ODPP**)

For the Accused person : Ms. L.Ratidara (**LAC**)

Date of Sentence : 30th May 2022

SENTENCE

1. The accused was charged with twelve (12) counts (Count 1-2 & 4 – 13) for *Obtaining Financial Advantage by Deception* contrary to Section 318 of the **Crimes Act 2009** and one count (Count 3) for *Causing a Loss* contrary to Section 324 (1) of the **Crimes Act 2009**
2. He pled not guilty and the matter proceeded to trial.
3. Following the trial the summary of the court's findings were as follows:

Count 1, 4, 7, 8, 9, 10, 11 and 12 – Accused is found guilty as charged.

Count 2, 3, 5, 6 and 13 – Accused is found not guilty as charged and is acquitted on the same.
4. The court shall sentence the accused only in terms of **Count 1, 4, 7, 8, 9, 10, 11 and 12**.
5. In terms of the summary of facts, this court's judgment is sufficient in that regard and the same shall not be re-visited.
6. Learned counsel for the accused person, has filed sentencing and mitigation submissions respectively.
7. The written submissions clearly set out inter alia that the accused seeks leniency from the court on two fronts. Firstly seeking that a non-conviction be directed as the accused is employed and is

a recipient of an Australian Aid scholarship¹ and secondly should the court convict the accused then a sentence at the lower end of the tariff was deemed proper in the circumstances. This would allow for the possible activation of a suspended sentence.

8. The personal circumstances of the accused were also highlighted including the accused's first offender status.
9. This court has considered them.

Restitution

10. The mitigation has highlighted that a total sum of \$2,050.00 has been refunded in terms of the counts which the accused has been found guilty of. Just for context the total sum for counts 1, 4, 7, 8, 9, 10, 11 and 12 is \$17,400.00.
11. There are no receipts to confirm that the monies have been paid however if the benefit of doubt is given to the accused, it would appear that the accused has only restituted eleven point eight percent (11.8%) of the total sum of money under the counts which the accused is guilty of.

Non-Conviction

12. As such this court cannot accept the submission that restitution is substantial. It falls therefor due to the minimal amount restituted² a recording of non-conviction is not warranted and the accused as a result is convicted as charged on counts **1, 4, 7, 8, 9, 10, 11 and 12.**

Maximum Penalty and Tariff

13. The maximum penalty for the offence of *Obtaining Financial Advantage By Deception* is ten (10) years imprisonment.
14. The sentencing tariff is between 2 and 5 years with the lower end of the band for unsophisticated opportunistic fraud and the higher for premeditated more sophisticated frauds. (See [Sharma \[2010\] FJHC 623](#), HAC 122.2010 Lbs.)

Sentence

15. In reaching the appropriate sentence the court is mindful of Section 4(1) of the *Sentencing and Penalties Act 2009* which it regurgitates herein below as follows:

¹ Copy of the offer for the Award was attached to the mitigation.

² Considering Section 16(1)(a) of the *Sentencing and Penalties Act 2009*.

“Sentencing Guidelines

4. — (1) *The only purposes for which sentencing may be imposed by a court are —*
- (a) to punish offenders to an extent and in a manner which is just in all the circumstances;*
 - (b) to protect the community from offenders;*
 - (c) to deter offenders or other persons from committing offences of the same or similar nature;*
 - (d) to establish conditions so that rehabilitation of offenders may be promoted or facilitated;*
 - (e) to signify that the court and the community denounce the commission of such offences; or*
 - (f) any combination of these purposes....”*

16. Further to the above, the court invokes Section 17 of the ***Sentencing and Penalties Act 2009*** which shall result in the accused being sentenced to an aggregate sentence considering the principle of totality in sentencing and the fact that the offences under **count 1, 4, 7, 8, 9, 10, 11 and 12** are related.

17. In ***Laisiasa Koroivuki v the State*** (Criminal Appeal AAU 0018 of 2010) his Lordship Justice Goundar discussed the guiding principles for determining the starting point in sentencing and observed:

"In selecting a starting point, the court must have regard to an objective seriousness of the offence. No reference should be made to the mitigating and aggravating factors at this time. As a matter of good practice, the starting point should be picked from the lower or middle range of the tariff. After adjusting for the mitigating and aggravating factors, the final term should fall within the tariff. If the final term falls either below or higher than the tariff, then the sentencing court should provide reasons why the sentence is outside the range".

18. Considering the gravity of offending and the accused’s culpability, this Court garnering from the decision in ***Sharma (supra)*** selects thirty six (36) months as the starting point for the aggregate sentence as this was a sophisticated fraud as highlighted by the facts.

19. The court notes that most of the complainants were known to the accused either as family members or members of his community³. This connotes that there was a breach of trust which aggravates the offending. The court adds twelve (12) months to reflect the aggravating features of the offence which brings the interim aggregate sentence to forty eight (48) months.

20. The court notes mitigation presented, first offender status and partial restitution wherein it deducts six (6) months bringing the interim aggregate sentence to forty two (42) months.

³ The witnesses had stated in evidence that they trusted the accused.

21. The accused was first produced on 27th August 2013 and was released on bail on 28th August 2013.
22. Pursuant to Section 24 of the *Sentencing and Penalties Act 2009* the remand period shall be deducted from the interim aggregate sentence of forty two (42) months, leaving the final aggregate sentence at forty one (41) months three (3) weeks and six (6) days.
23. As the final period of imprisonment does not fall below two (2) years, the court shall not direct its mind towards Section 26 of the *Sentencing and Penalties Act 2009*.
24. Therefore effective immediately the accused shall serve a custodial imprisonment term of forty one (41) months three (3) weeks and six (6) days as a result of his aggregate sentence.
25. Pursuant to Section 18 (1) and (5)) of the *Sentencing and Penalties Act 2009* an aggregate non-parole period of thirty (30) months is imposed.
26. The clerk will explain this sentence to the accused person.
27. 28 days to appeal.


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JEREMAIA .N.L SAVOU
RESIDENT MAGISTRATE

