

IN THE MAGISTRATE'S COURT OF THE REPUBLIC OF FIJI
AT SUVA

CRIMINAL CASE No: 1182 / 2023

STATE
Vs
JOJI TARURA

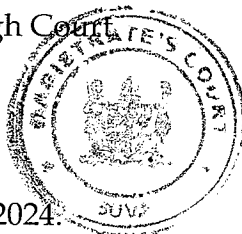
For Prosecution: W/Sgt Latu, L.

For the Accused: Mr. Waqavanua, M. (Legal Aid Commission)

SENTENCE

1. JOJI TARURA, you were found guilty and convicted by this Court for one count of **Assault Occasioning Actual Bodily Harm** contrary to the section 275 of Crimes Act 2009, following your unequivocal guilty plea.
2. You admitted to the summary of facts submitted by the prosecution, which contains all the elements of the above offence.
3. I consider summary of facts, your written mitigation submissions and sections 4 and 15 of the Sentencing and Penalties Act 2009, in deciding a suitable sentence.
4. Maximum punishment for the offence of **Assault Occasioning Actual Bodily Harm** is 05 years of imprisonment.
5. Tariff for this offense was settled in **State v Kalouteretere - Sentence [2018] FJHC 845; HAC270.2018 (12 September 2018)** Goundar J. stated therein by citing **State v Anjula Devi (Criminal Case No. 04 of 1998 Lab)** as thus: *"the tariff ranges from a suspended sentence, where there is a degree of provocation and no weapon used, to 09 months imprisonment for more serious cases of assaults."*
6. However, the offence committed by you is in the nature of domestic violence. In the case of **State v Prasad [2015] FJHC 493; HAA010.2015 (3 July 2015)**, Madigan J stated that: *"A "normal" punishment for a domestic violence assault is a term of imprisonment for a period of between 9 and 12 months with an enhancement up to 18 months if the assault be considered serious. A judicial officer can of course sentence outside that tariff if and only if he or she gives reasons for departing from the tariff."*
7. Considering the objective seriousness of the offence, I commence your sentence at 09 months imprisonment.
8. You had assaulted your wife. Thereby you breached the trust she had placed upon you. That aggravating factor increased your sentence to 18 months.
9. I consider the following mitigating factors of yours: personal and financial circumstances; 1st offender; remorsefulness; cooperating with police and early guilty plea made without going for a full trial.

10. Adequate discount granted for relevant mitigating factors, (03 months) together with separate 1/3rd of the remaining period (05 months) of the sentence is deducted for early guilty plea. Your sentence period now is at 10 months.
11. You were not in remand custody for this offence. Thus, you are not entitled for any deductions per section 24 of the Sentencing and Penalties Act. **Your final sentencing period is now 10 months.**
12. The sentence is less than 02 years; thus, the Court has a discretion to suspend it. I consider the guideline cases on suspension of sentences: **DPP v Jolame Pita** (1974) 20 FLR 5, **DPP v Saviriano Radovu** (1996) 42 FLR 76 and **Deo v State** (2005) FJCA 62 to ascertain whether there are any special circumstances to justify a suspension as per section 26 of the Sentencing and Penalties Act.
13. Taking into consideration all the circumstances in this case, I find that this is a fit and proper case to suspend full sentence.
14. You are hereby explained of the meaning, effect, and the consequences of a suspended sentence in your preferred language.
15. Having done so, **I now suspend your Ten (10) months imprisonment sentence for a period of Two (02) years.**
16. In your mitigation submission, your counsel had requested not to record your conviction. However, you were unable to satisfy this court to exercise its discretion under section 16 (1) of the Sentencing and Penalties Act. You were also unable to meet with the criteria laid down in the case of **State v Batiratu**; HAR001.2012 (13 February 2012). Your unsubstantiated application for not to record your conviction is thus refused and your conviction will accordingly be recorded.
17. Further, a Final Domestic Violence Restraining Order is hereby issued against you, pursuant to Section 24 read with Sections 27 of the Domestic Violence Act 2009, for the protection of the victim. This order contained standard non molestation conditions and valid till varied or suspended by a competent court. Breach of this order shall result in you being charged and prosecuted for an offence pursuant to Sec. 77 of the Domestic Violence Act. The conditions are explained to you in your preferred language.
18. 28 days to Appeal to the High Court



Lakshitha Jayawardhana
Resident Magistrate

At Suva, on this 04th day of January 2024.