

**IN THE HIGH COURT OF FIJI**  
**AT LAUTOKA**  
**APPELLATE JURISDICTION**  
**CRIMINAL APPEAL CASE NO.: 44 OF 2014**

**BETWEEN:** SANJIT SINGH

*Appellant*

**AND:** STATE

*Respondent*

**Counsels:** Ms. S. Nasedra for the Appellant  
Mr. Aman Datt for the Respondent

**Date of Hearing:** 26 November 2014

**Date of Judgment:** 27 November 2014

**JUDGMENT**

1. The appellant was charged before the Tavua Magistrate Court with one count of Driving Motor vehicle whilst there is presence in the blood concentration of alcohol in excess of the prescribed limit contrary to section 103 (1) (a) of Land Transport Act no.35 of 1998.
2. He had pleaded not guilty and was convicted after trial on 11.8.2014. He was sentenced on 26.8.2014 to pay a fine of 5 penalty units (\$500.00) in default 50 days in prison. In addition the appellant is disqualified from driving for a period of 6 months.
3. This appeal against the sentence was filed on 22.9.2014 within time.
4. His grounds of appeal against the sentence are:
  - (i) The learned Magistrate erred in law when he didn't grant a lower suspension term of 3 months for the following reasons:

- (a) Appellant entered an early guilty plea
- (b) Appellant has been also fined \$500
- (c) Appellant was remorseful
- (d) Appellant is employed and married with 3 kids and looking after his family
- (e) Appellant's only form of support is from driving in which he needs his license
- (f) Appellant 6 months license off is about to lose his job.

5. Both parties have filed written submissions. I have carefully considered those.

6. In **Bae v State** [1999] FJCA 21; AAU 0015u.98s (26 February 1999) the Court of Appeal held that:

*"It is well established law that before this court can disturb the sentence, the appellant must demonstrate that the court below fell into error in exercising its sentencing discretion. If the trial Judge acts upon a wrong principle, if he allows extraneous or irrelevant matters to guide or affect him, if he mistakes facts, if he does not take into account some of the relevant considerations, then the appellate court may impose a different sentence. This error may be apparent from the reasons for sentence or it may be inferred from the length of the sentence itself. (**House v The King** [1936] HCA 40; (1936) 55 CLR 499)*

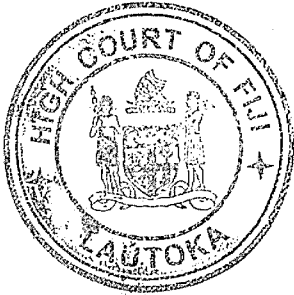
7. The disqualification period of 6 months is well within the period of 3 months to 2 years given for the first offenders under the section

8. In **Siwan v State** [2008] FJHC 189; HAA 050.2008L (29 August 2008) Hon. Mr. Justice Daniel Goundar held that an order made pursuant to Section 201 (2) (b) of the Criminal Procedure Code is clearly discretionary. He further held:

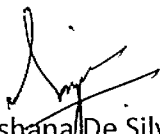
*"The law in relation to an appeal against the exercise of discretion is settled. The discretion will be reviewed on appeal, if the trial court acts on wrong principle, or mistakes the facts, or is influenced by extraneous considerations or fails to take into account of relevant considerations. In addition, if it should appear that on the facts the order made is unreasonable or plainly unjust, even if the nature of the error is not discoverable, the order will be reviewed (**House v The King** [1936] HCA 40; (1936)55 CLR 499, **Evans v Bartlam** [1937] AC 437). Failure to give weight or*

*sufficient to relevant considerations will also vitiate the exercise of a judicial discretion but only if that failure is central to the exercise of the discretion (Charles Osenton & co. v Johnston [1942]AC 130).*

9. There is no error in the sentence and the appellant had failed to satisfy the learned Magistrate or this court that there are exceptional circumstances to justify non-suspension of the license. The learned Magistrate had correctly exercised his discretion in setting a suspension period.
10. The appellant had pleaded not guilty and was convicted after trail. There is no evidence that he was remorseful. Thus there is no merit in the ground of appeal.
11. Appeal against the sentence is therefore dismissed.



At Lautoka  
27<sup>th</sup> November 2014

  
Sudharshana De Silva  
JUDGE

Solicitors : Legal Aid Commission for the Appellant  
Office of the Director of Public Prosecutions for Respondent