

STATE v TIMOCI SILATOLU and Anor

HIGH COURT — CRIMINAL JURISDICTION

5 WILSON J

27 June 2003

[2003] FJHC 335

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Criminal law — sentencing — Treason — major participants — gravity of offense — sentenced to life imprisonment — fixed period of 9 and 7 years to be served.

15 Respondents were found guilty and were convicted of Treason, a capital crime at the time of its commitment. The judge considered aggravating factors that both were major participants and the gravity of the offense. Second Respondent was punished less severely since he showed remorse and previous good behaviour. The judge also considered the 3-year period served by both in custody.

20 **Held** — First Prisoner was sentenced to life imprisonment and was fixed a period of 9 years to be served. Second Respondent was sentenced to life imprisonment and was fixed a period of 7 years to be served.

Sentenced to 9 and 7 years respectively.

No case cited.

25 *P. Ridgway* and *W. Kurisaqila* for the State.

S. Valenitabua for the 1st Prisoner.

M. Waqavonovono and *A. Singh* for the 2nd Prisoner.

30 **Wilson J.** Timoci Silatolu and Josefa Nata, each of you has been found guilty and has been convicted of Treason, an offence which, at the time you committed this crime, was regarded as (and indeed was) a capital crime, one of the most serious crimes any person could commit. That crime is now punishable by a sentence of up to an indeterminate sentence of life imprisonment, that is to say, a sentence of up to life imprisonment without the fixing of a period of
35 imprisonment that must be served.

As I explained to the assessors (on 17 March 2003) during my summing-up at the end of your trial, it is the law of the Fiji Islands that any person (in Fiji) who is proven to have intended to “levy war” against the State of the Republic of the Fiji Islands or its government, and who is proven to have done something, by any
40 overt act or acts, such as planning (or plotting) to overthrow, by actual force or threat of force, the Parliament and the Government of the day; the taking and detaining (as hostages) of senior parliamentarians; involvement in an armed insurrection; and the like; commits the offence termed “treason” in Fiji.

45 You were each proven to have committed that crime. Both of you, together with George Speight and other persons, between 19 May 2000 and 27 July 2000 at Suva and at other places, did commit Treason against the Republic of the Fiji Islands and the lawful government thereof. It was a joint enterprise that you were each involved in. There was a common intention held by both of you (and by
50 George Speight) to attempt to achieve an unlawful purpose in conjunction with one another, viz a coup involving a sudden attempted overthrow of the government by force. While neither of you was the ring-leader and “voluble,

visible and vocal front-man” (to use Mr Ridgway’s words to describe George Speight), you were each heavily involved as major participants. Timoci Silatolu, for reasons which I will explain later, I am satisfied that you were more a major participant than Josefa Nata, but, in terms of culpability, little separates each of
5 you from George Speight.

You were both involved in the attempted coup at the planning stage, at the stage of final preparations, at the stage when events were co-ordinated, and at the stage when a rebel government was established (and “Ministers” were sworn in), and at the stage when decisions were made and implemented, all designed to
10 achieve the objectives of the coup.

Timoci Silatolu, you were sworn in as the “Prime Minister” shortly after the storming of the Parliament. You “addressed the Nation”. You forced or persuaded (successfully) some members of the overtaken government to resign; you failed to persuade others.

15 Aggravating factors in your case, Timoci Silatolu, are that you were a Member of Parliament and a Member of the Coalition Government at the time of this coup. You had, on 14 June 1999, sworn an oath of allegiance as a Member of the House of Representatives “to the People and the Republic of the Fiji Islands according to law” — Ex P48 — You broke that promise and you were in breach
20 of trust. Also you performed the role of the “link-man” (or the person who gave “the green light” for the coup to happen); you left the Parliamentary Chamber when everything appeared to be in readiness and you made a phone call on your mobile phone to signal to George Speight and his armed and partly-disguised hench-men that the time was right for the storming of the Parliamentary
25 Chamber. Your conduct involved not only a breach of trust of significant proportions but also a betrayal of your Prime Minister, the Government of which you were a member, and the very Parliament itself.

Your participation in the events which followed the storming of the Parliament can only be described as deliberate, ongoing, and determined. You were a
30 member of “the George Speight Group” and you were “up to your neck” in the steps that were taken (unsuccessful in the end) to achieve the aims of the coup and to establish a new and a differently-constituted civilian government for Fiji.

Josefa Nata, you were “the Secretary to Cabinet” and the “media man” for the rebel government. It was not a case of you being just opportunistic and joining
35 in on something started by others. While you were not present when weapons were shifted on the night before the attempted coup started and while you were not at Parliament House or involved in the planning in detail of the armed assault of (and take-over which took place in) the Parliamentary Chamber, you performed an important role “behind the scenes”, both before the storming of the
40 Parliament and while the hostages were being detained, for nearly two months. You were indeed very much a member of “the Speight Group” and you were culpable. There was no direct betrayal of the Prime Minister and the Government by you, as was the case with Timoci Silatolu. The documentary evidence that was located at your residence and the mobile phone evidence (as well as other
45 evidence established the fact that you, along with Timoci Silatolu, were an active participant and a key player.

I accept the submissions of counsel for the prosecution, Mr Ridgway, regarding the seriousness of this crime of treason.

50 The documents that were located by the police and which were described at your trial as “the tools in trade of the traitor”, as well as the public statements made by each of you to and over the media (indeed all the circumstantial

evidence relied upon by the prosecution, which I accepted and as no doubt did the assessors) reveal the extent of your determination and the seriousness of the path you were each taking.

You were both pursuing a cause passionately; you were “pushing an agenda of indigenous rights” (your words, Josefa Nata), but it was a cause which was aimed at the very integrity of the State itself and it was calculated (likely) to damage the very core of the nation’s aspirations as a sovereign democratic State adhering to the rule of law and the upholding of human rights. Your conduct was destructive of the rule of law itself; it cannot be justified upon any legitimate ground. It goes to your credit, Josefa Nata, that yesterday, in this court-room, you did not seek to argue with those propositions just articulated by me.

The victims of your wrongdoing were the people of the Fiji Islands themselves, for many in an individual personal sense and, for the rest, in a communal sense. The extent of the total damage suffered and victimisation caused would be hard to calculate. It is difficult to imagine anything, save a bloody civil war and total and lasting anarchy, that could have harmed your country more. The consequences in terms of personal suffering, loss and damage, to say nothing of the damage to your country’s image both here and abroad, were many and substantial.

While circumstances of aggravation exist, there were, I think, no circumstances of mitigation; at any rate, none has been pointed to by counsel on your behalf, save and except for the suggestion made by you, Josefa Nata, that your judgment was clouded by a misguided desire to pursue a cause.

In no sense do I punish you more severely because you pleaded not guilty to this charge and contested the charge. It was your right (your “human right under the Constitution”) to plead not guilty. That having been said, I cannot, for any plea of guilty and for genuine remorse and cooperation with (or assistance to) the authorities, give you the credit of as much as a third off your sentence (if a term of years) or off a “fixed” term which “must” be served, in the case of either an actual sentence of imprisonment (for a term of years) or a life sentence.

As has already been stated, deterrence (individual and general) and retribution (to a degree) need emphasis here. Rehabilitation is not overlooked. That notion (and restorative justice and reconciliation) can be (and are) taken account of in fixing the period that must be served.

Timoci Silatolu you are a man of mature years. You are a married man with four children. You are a former employee of Telecom Fiji and a service engineer. You were a member of Parliament from 1999 till the time of and following the coup. You have no previous convictions, and I accept that you are a man of previous good character. You are (or were at the time) a Ratu. I accept that you have made some (but not much) progress towards achieving your rehabilitation, thanks to a programme run by Prison Fellowship.

Josefa Nata you are 45 years of age. You are a divorcee and are currently single. You have three children — two daughters (aged 20 and 18), who are studying in the United States of America, and a 3-year-old son who is raised by your aging mother in Lau. Although you have one previous conviction for an unrelated offence, I treat you as if you are of previous good character. You had a good education, and were for many years a journalist. You specialised in political journalism and were well known.

The fact that this is (or is to be treated as) an offence committed by a first offender does not carry much weight. The gravity of this crime almost entirely eliminates from consideration, in each case, the factor of good character.

I have listened to and taken account of many of the submissions made on your behalf by your respective counsel.

Josefa Nata, your expression of regret, as well as your apology to the people “at the 11th hour”, so to speak, before sentencing, carries very little weight; it does carry some. You deserve some (but not much) credit for the expression of regret for harm and shame caused to your parents (one of whom is now deceased) and to the people. You say that you were misguided. I could show you more leniency if I felt convinced (on the balance of probabilities) that you truly regret your involvement in this extremely serious crime because you now truly see it and understand its wrongfulness. I am not persuaded that “the healing process” (a phrase used by Mr Singh) has advanced very far in the case of either of you. The case of *R v Fernando* has no application here. The same applies to the sentence received by Mr Viliame Savu.

I must (and do) take into account the period served by each of you in custody up until the date when you will receive your respective sentences. Each of you has been in custody for nearly three years until this time. That is equivalent to a fixed sentence already served of something in excess of four-and-a-half years, allowing for good behaviour.

The appropriate sentence for you, Timoci Silatolu, is a sentence of life imprisonment with a “fixed term” that “must” be served of 12 years’ imprisonment.

The appropriate sentence for you Josefa Nata is a sentence of life imprisonment with a “fixed” term that “must” be served of 10 years’ imprisonment.

It would be inappropriate, in my judgment, for either of you, under the current sentencing regime laid down by Parliament, to receive anything less than a life sentence, such as, for example, a long sentence of imprisonment (fixed); certainly a moderate sentence or a short sentence would be totally inappropriate.

By the application of sentencing principles, it would also be inappropriate and harsh, in my judgment, for either of you, under the current sentencing regime laid down by Parliament, to receive an indeterminate life sentence (that is to say a life sentence without the “fixing of a period that must be served”) or even to receive a life sentence with the “fixing” of an effective period of imprisonment that “must” be served of more than 10 years; to so order would involve this court doing something that is undesirable, namely, being out of step with sentencing levels and practices for very serious crimes in the South Pacific Region.

I have considered whether a sentence of imprisonment for a term of years (say 15 years for Timoci Silatolu) would be appropriate. Such a sentence would hardly have the appearance of being excessive in the circumstances. Such a sentence, if imposed, would result in you, Timoci Silatolu, still having to serve a further 10 years (or thereabouts) from today taking into account time spent in custody and expected remissions for good conduct and the like. A sentence of imprisonment for any less than 15 years (say 12 or 10 years) would certainly be challengeable as being manifestly inadequate.

I have done much judicial “soul-searching”. I have striven to see if, in the circumstances of this extremely serious Treason case, there is any just alternative to a life sentence that might be appropriate for either or both of you. There is none, in my judgment. But, there is room and scope for some leniency and mercy (not only in your interests, but also in the interests of all the citizens of the Fiji Islands, and having regard to the notions of reconciliation, restorative justice and the like) in the “fixing” of the period which “must” be served.

Timoci Silatolu, taking into account the time spent in custody to date and all other appropriate factors, the sentence of the court is that you, Timoci Silatolu, be sentenced to life imprisonment, and I “fix” a period of 9 years from today which “must” be served.

5 Josefa Nata, taking into account the time spent in custody to date and all other appropriate factors, the sentence of the court is that you, Josefa Nata, be sentenced to life imprisonment, and I “fix” a period of 7 years from today which “must” be served.

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Sentenced to 9 and 7 years respectively.

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