

IN THE MAGISTRATES' COURT OF FIJI
AT TAVUA
CRIMINAL JURISDICTION

Criminal Case No: 117 - 2019

STATE

-v-

LUKE NABARO

Before : RM Fotofili L.
For Prosecution : WPC Chand A. [Police Prosecution]
Accused : Ms Henao G [Legal Aid Commission]
Date of Sentence : 22nd July 2019

SENTENCE

1. **LUKE NABARO**, you have pleaded guilty to the following charge:

Statement of Offence

ABSCONDING BAIL: Contrary to section 25 (1) (c) and 26 (1) of the *Bail Act of 2002*.

Particulars of Offence

LUKE NABARO on the 1st day of April, 2019 at Tavua in the Western Division, whilst released on bail by Tavua Magistrate Court vides Tavua 153/18 without reasonable excuse fails to present himself at the Tavua Magistrate Court.

2. You have accepted or admitted the facts proposed by prosecution and I have taken judicial notice of the records in file number Tavua CF 153/18 [a case involving theft and found your guilty plea to the charge of absconding bail supported.
3. You were granted bail in Tavua CF 153 - 18 and one of your bail conditions was to continue reappearing when your case is adjourned.
4. You failed to reappear on the 16th of April 2019. You said that you were working as a volunteer for a government ministry and that is the reason for your absence.
5. I do not find the reason for not reappearing as amounting to good cause.

6. I convict you of the charge of absconding bail.
7. You were arrested pursuant to a warrant being issued. After being arrested and in your interview with the police, you said that you were working and you forgot your date and that is the reason you did not turn up in court.
8. You have been in remand since your arrest.
9. You were supposed to be sentenced on the 25th of June 2019 but due to an oversight which is not your fault, your sentence had to be deferred and you were further remanded.
10. I will only consider the time you have spent in remand since the 25th of June 2019 as time served. This is equivalent to 27 days.
11. The other period spent in remand will not be considered as time served as you deserved to be remanded in custody as you cannot be trusted to reappear.
12. You are a first offender.
13. You are 20 years old. Single. No children. Pleaded guilty early. Resides with your parents. Worked as a volunteer for a government ministry.

LAW

14. The maximum sentence that is imposable by law for breaching a bail condition is a fine of up to \$2,000 and or imprisonment up to 12 months.

TARIFF

15. The tariff for breaching a bail condition and absconding bail are the same. It is between a suspended sentence to 9 months imprisonment [see for example - **Ulumatai v State** [2019] FJHC 114; HAA90.2018 (22 February 2019)].
16. 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)].

STARTING POINT

17. Considering the circumstance of your case, I select a 1 month imprisonment term as a starting point.

AGGRAVATING FEATURE

18. I do not see any reason why your sentence should be increased.
19. Your sentence remains at 1 month imprisonment.

MITIGATION

20. You will get some reduction for having a past good history.
21. I accept that you are remorseful.
22. You are young.
23. You have cooperated with police during your interview.
24. Your sentence is reduced to 2 weeks imprisonment.

GUILTY PLEA

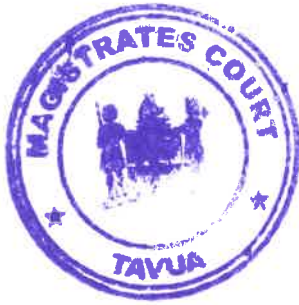
25. I accept that your guilty plea is early.
26. I will reduce your sentence to 9 days imprisonment.

SUSPENDED SENTENCE

27. I can suspend your sentence pursuant to section 26 (1) and (2) (b) of the **Sentencing and Penalties Act 2009** either wholly or in part.
28. Your sentence will be aimed at deterrence and to punish you adequately.

SUMMARY

29. You are sentenced to 9 days imprisonment.
30. As I have explained, I will consider 27 days of your time spent in remand as time served.
31. I consider that you have served your sentence in this case.
32. 28 days to appeal.



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Lisiate T.V. Fotofili
Resident Magistrate

Dated at Tavua this 22nd day of July, 2019.