

**IN THE MAGISTRATES' COURT OF FIJI AT TAVUA
CRIMINAL JURISDICTION**

Criminal Case No: 268 - 2018

STATE

-v-

VILIAME VUNIVALU TALOGA

For Prosecution: Inspector Lenaitasi S. [Police Prosecution]
Accused: Ms Henao G. [Legal Aid Commission]
Date of Sentence: 7th May 2019

SENTENCE

BACKGROUND

1. **VILIAME VUNIVALU TALOGA**, you have pleaded guilty to the following charge:

Statement of Offence

ASSAULT OCCASIONING ACTUAL BODILY HARM: Contrary to section 275 of the *Crimes Act of 2009*.

Particulars of Offence

VILIAME VUNIVALU TALOGA on the 19th day of September, 2018 at Nadolodolo Settlement, Tavua in the Western Division assaulted **VILIAME TALOGA** thereby occasioning him actual bodily harm.

2. I am satisfied that your guilty plea or admission of guilt is voluntary and that you understand the consequence of your plea. The evidence also supports your guilty plea. I have convicted and found you guilty accordingly.
3. The victim here is your 15 year old son. The music was loud. You asked for it to be turned down but that did not happen. You then hit him with a piece of wood on his hands. Later, you punched him several times. Your son then ran away from home.
4. You were arrested later and interviewed by police. You said that you came home to take a measuring tape to assist you renovate the church. You heard your wife calling your son, telling him to give water to the cows. He answered your wife in a harsh

tone replying for her to wait. You got very angry and you took a cassava plant and hit him with it but he kept on talking back and so you hit him with a hosepipe. He kept on answering back and then you punched him on his chest. A medical report was shown to you and you admitted causing injuries to your son.

5. The victim was medically examined about 4 days later. Amongst other things, there were bruises to his back and linear bruises to both his wrist.
6. I have no problems and I am sure that you caused all these injuries.
7. You are a first offender.
8. You have not spent any time in remand.
9. You are 54 years old. You are married with 4 children. You work as a casual labourer. You are the sole breadwinner. You were upset at the time. You understand that what you did was wrong. The victim is at home with you. You promise not to reoffend. You seek forgiveness.

LAW

10. The maximum sentence that is imposable by law for the offence of assault occasioning actual bodily harm is up to 5 years imprisonment.

TARIFF

11. The sentencing tariff for assault occasioning actual bodily harm ranges between a suspended sentence and for more serious cases to 9 months imprisonment depending on the degree of provocation and whether any weapon was used [see for example State v Kalouteretere - Sentence [2018] FJHC 845; HAC 270. 2018 (12 September 2018).

STARTING POINT

12. Considering the circumstance of your case, a 4 month imprisonment term is selected as a starting point.

AGGRAVATING FEATURES

13. There was a domestic relationship in existence. This was your son.
14. He was young or 15 years old.
15. You used weapons. A cassava plant and then a hosepipe. You also punched him on his chest.
16. Your sentence is increased to 10 months imprisonment.

MITIGATION

17. You will get some reduction for having a past good history.
18. I accept that you are remorseful.
19. You went about dealing with the situation the wrong way but I accept that you must have been upset.
20. You have cooperated with police.
21. Your sentence is reduced to 5 months imprisonment.

GUILTY PLEA

22. You have pleaded guilty early.
23. I will reduce your sentence to 3 months and 1 week imprisonment.

SUSPENSION

24. I can suspend your 3 months and 1 week imprisonment term either in whole or in part pursuant to section 26 (1) and (2) (b) of the **Sentencing and Penalties Act 2009**.
25. I also take into account the factors outlined in section 4 of the **Sentencing and Penalties Act 2009** when deciding whether or not to suspend your sentence.

26. Your sentence will be aimed at deterrence and to punish you adequately.

SENTENCE

27. You are sentenced to 3 months and 1 week imprisonment.

28. You have not spent any time in remand and so your sentence will not be reduced any further.

29. I am inclined to suspend 2 months and 3 weeks of your imprisonment term.

30. It will be suspended for the next 18 months.

31. Commit any other offence in the next 18 months and this term held in waiting maybe activated.

32. You will serve 2 weeks imprisonment, immediately.

33. The Domestic Violence Restraining Order [DVRO] with section 27 standard non-molestation conditions which was imposed and explained to you on the 24th of September 2018 is made final. You are to behave towards your son. You breach any of those DVRO conditions and you may be charged and prosecuted for another offence.

34. 28 days to appeal.



Dated at TAVUA this 7th day of May 2019

.....
Lisiate T.V. Fotofili
Resident Magistrate