

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

Criminal Case No: 45 - 2015

STATE

-v-

OVINI TABUVUKI

Before : RM Fotofili L.
For Prosecution : WPC Chand A. [Police Prosecution]
Accused : Ms Henao G. [Legal Aid Commission]
Date of Sentence: 11th August 2020

SENTENCE

BACKGROUND

1. **OVINI TABUVUKI**, you have pleaded guilty to the following amended charge [amended by prosecution on the 1st of July 2019] :

FIRST COUNT

Statement of Offence

DRUNK AND DISORDERLY: Contrary to section 4 of the **Minor Offences Act, Cap 18**.

Particulars of Offence

OVINI TABUVUKI on the 25th day of February, 2015 at Tavua Town in the Western Division was drunk and behave in a disorderly manner in a public place namely Tavua Town.

SECOND COUNT

Statement of Offence

DAMAGING PROPERTY: Contrary to section 369 (1) of the **Crimes Act No. 44 of 2009**.

Particulars of Offence

OVINI TABUVUKI on the 25th day of February, 2015 at Tavua Town in the Western Division wilfully and unlawfully damaged the door handle of the rear passenger side of a Taxi registration number LT 5254 valued at \$100 the property of **PIO BULIVALE**.

THIRD COUNT

Statement of Offence

RESISTING ARREST: Contrary to section 277 (1) (b) of the **Crimes Act No. 44 of 2009**.

Particulars of Offence

OVINI TABUVUKI on the 25th day of February, 2015 at Tavua Town in the Western Division wilfully and unlawfully obstructed PC 4221 **IVERI MOMO** in the due execution of his duty.

2. I am satisfied that your guilty plea is voluntary. Your plea too is supported by the evidence. You have also made admissions in court and admitted the facts proposed by the prosecution. I am also satisfied that you understand the consequence of your plea and admission.
3. You have a mental health history and you have been committed for psychiatric evaluation. There is a presumption that you were and are not suffering from any mental impairment whether at the material time and even now which touches on whether you are fit to plead or understand the proceedings and can give instructions to your counsel. I am not satisfied on the balance of probabilities that this presumption has been rebutted.
4. I find you guilty and I convict you of all the 3 counts in the charge accordingly.
5. It was around 10pm and the defendant had returned from drinking liquor with some friends at a local club. The defendant was drunk. He was staggering when walking. The heavy smelt of liquor emanated from him. He was in town and was told by police to go home. The defendant challenged police officers to a fight. The defendant was yelling at the top of his voice. The defendant was boarding a taxi when he swore at one police officer saying 'Magaitinamu' [your mother's vagina]. Police attempted to arrest the defendant and the defendant pulled the handle of the vehicle and in the process he broke the door handle which is valued at \$100. The defendant pushed a male police officer who was trying to arrest him. The defendant tried to run away

but he was caught. He was uncooperative and was swearing and shouting. Police successfully arrested the defendant and locked him in the cell at the police station.

6. The defendant was interviewed by police about a day later from the time of his arrest. The defendant admitted that he was drinking at the club at 1pm with friends. He finished drinking at around 7pm and came to town. He cannot remember whether he was making noise, he cannot remember whether he swore at police and he cannot remember whether he was challenging police to a fight. The defendant said that he was really drunk. The defendant said that he remembers being pulled out of a taxi and an officer punched his face and then the defendant started swearing. The defendant apologised and said that he will not repeat what he did.
7. The defendant has been in remand since the 12th of November 2019 and it is primarily due to being later charged with burglary and theft [CF 235 – 2019] and criminal trespass and indecent assault [CF 236 – 2019].
8. I will consider all of the time the defendant has spent in remand as time served. I approximate the time he has spent in remand to be 9 months.
9. The defendant is a first offender.
10. The defendant is 31 years old. He is single and lives with his parents. He was a labourer. He has mental health issues and has been committed before to the mental health hospital. He is remorseful and apologises to the court. The defendant submits that he has learnt a lot while in prison. He promises to change and promises to stop consuming alcohol.

AGGREGATE SENTENCE

11. The three counts were committed in the course of the same transaction or founded on the same facts.
12. Pursuant to section 17 of the **Sentencing and Penalties Act 2009**, I will impose an aggregate sentence on the defendant for all three counts.
13. Since count 3 – resisting arrest is the most serious of the three counts, I will use that as the foundation when passing the defendant's aggregate sentence.

LAW

14. An amendment [**Crimes (Amendment) Act 2018**] was made increasing the maximum imposable sentence for serious assault to 10 years imprisonment and the increase came into effect on the 21st of March 2018 [Legal Notice No. 16 of 2018].
15. That maximum of 10 years only applies if the defendant bites, spits on or throws or applies bodily fluid or faeces to the police officer or the defendant pretended to be armed with a dangerous or offensive weapon or instrument or the defendant causes bodily harm to the police officer.
16. If none of the situations above exist, then the defendant is liable to be sentenced up to 5 years imprisonment.
17. For the defendant Ovini Tabuvuki, none of the circumstance outlined above exists and the maximum imposable for him is up to 5 years imprisonment.

TARIFF

18. The courts sentencing preference for this offence is by imposing a 6 to 9 months imprisonment term [**Epeli Talakubu v. The State** Criminal Appeal No HAA 37 of 2016; **State v Batiratu** [2012] FJHC 864; HAR0001.012].
19. The above tariff is applied in cases where the serious assault attracts up to 5 years imprisonment.

STARTING POINT

20. Considering the objective seriousness of the case, I select 7 months imprisonment as a starting point.

AGGRAVATING FEATURE

21. The offence was committed in public.
22. The defendant swore at police.
23. He challenged police to a fight.
24. Not only do I accept that the defendant was drunk but that he was excessively drunk.

25. The defendant damaged the door handle of the taxi valued at \$100.
26. The defendant's sentence is increased to 15 months imprisonment.

MITIGATION

27. The defendant is a first offender.
28. I am persuaded that the defendant is remorseful.
29. He did not admit to the offences as he said that he was too drunk and could not remember much. I accept though that he cooperated as best as he could.
30. I reduce his sentence to 10 months imprisonment.

GUILTY PLEA

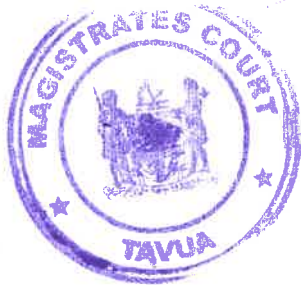
31. I accept that the defendant's guilty plea is early and I will reduce his sentence to 6 months and 18 days imprisonment.

SUSPENSION

32. I can suspend the imprisonment term either in whole or in part pursuant to section 26 (1) and (2) (b) of the **Sentencing and Penalties Act 2009** as long as the sentence is below to 2 years imprisonment.
33. 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.
34. The defendant's sentence will be aimed at deterrence and to punish him adequately.

SUMMARY

35. **OVINI TABUVUKI**, you will receive an aggregate or combined sentence for all three counts.
36. You are sentenced to an aggregate 6 months and 18 days imprisonment.
37. You have spent 9 months in remand and I will consider this as time served.
38. I deem that you have served your punishment.
39. I convict you but discharge you of any further punishment in this case pursuant to section 15 (1) (h) of the **Sentencing and Penalties Act 2009**.
40. 28 days to appeal.



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Lisiate T.V. Fotofili
Resident Magistrate

Dated at Tavua this 11th day of August, 2020