

IN THE MAGISTRATES' COURT OF FIJI
AT TAVUA
CRIMINAL JURISDICTION

Criminal Case No: 151 - 2019

STATE

-v-

GABRIELI RATU

Before : RM Fotofili L.
For Prosecution : Inspector Lenaitasi S. [Police Prosecution]
Accused : In Person
Date of Sentence: 10th January 2020

SENTENCE

BACKGROUND

1. **GABRIELI RATU**, you have pleaded guilty to the following charge:

Count 1

Statement of Offence

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

Particulars of Offence

GABRIELI RATU on the 7th day of July, 2019 at Tavua in the Western Division, was drunk and disorderly in a public place namely Nands Shop.

Count 2

Statement of Offence

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

Particulars of Offence

GABRIELI RATU on the 7th day of July, 2019 at Tavua in the Western Division, breached the condition of bail by not complying with the condition imposed by

Tavua Magistrate Court when bailed by the said court on 23-11-18 not to consume any liquor until all cases are completed and to remain indoors daily between 7pm to 6am. CF 241 – 18.

2. I am satisfied that your guilty plea to the charge is voluntary and that you understand the consequence of your plea. Your admission and the evidence also support your guilty plea.
3. Relevant to Count 2, I have taken judicial notice of your other file Tavua CF 241 – 18 and the records therein. It is for a charge of indecent assault and breaching a bail condition. You were granted bail on the 10th of September 2018 [and not the 23rd of November 2018 as stipulated in the particulars of Count 2] and as part of your bail conditions, you were to remain indoors [abide by a curfew] between 8am to 8pm daily and you were not to consume any alcohol or liquor until all your cases were completed.
4. There was no reasonable cause for you to breach your bail conditions. You breached those bail conditions when you committed the offence in Count 1.
5. I have found you guilty of both counts and I convict you of the charge.
6. It could be argued that the allegation in Count 2 is duplicitous. I do not find that to be the case as you breached multiple bail conditions in the same transaction. Even if it were duplicitous, I do not find that it is prejudicial to you. You understand the allegation.
7. It was almost 11pm and you were at town in the shop. You asked for a match to light your cigarette and you were told by the female victim who was looking after the shop, to buy the match. You argued with her. She told you to leave. You swore at the victim [vulgar words used is not specified]. You smelt of liquor and you were drunk. She told you that you that she will report you to the police. You went to the village to get assistance from the victim's family to stop the victim from reporting against you to the police. The mother of the victim refused to come with you and you swore [vulgar words used is not specified] at her too.
8. A complaint was made. You were later arrested and interviewed by police. In your interview, you admitted drinking spirit and mixed rum on the day in question. You then went to buy cigarettes at a shop. The lady looking after the shop is related to you. You swore at the lady when she refused to give you a match. You swore at her as you were really drunk. She told you that she will report you to the police. You ran away and went to see her mother. Her mother told you that she had a headache. You swore at the mother too as she was not cooperative with you.

STARTING POINT

17. Considering the objective seriousness of your case, I select the following starting points:

Count 1: Drunk and Disorderly - 7 days imprisonment

Count 2: Breach of Bail – 1 month imprisonment

AGGRAVATING FEATURES

18. The profanity you used on the lady in the shop and her mother is not specified but I am sure they were not nice or pleasant.
19. You are related to both the female victims.
20. Your actions portray a complete disregard for the law. It was defiant in light of all your pending cases and being fortunate to have been released on bail.

Count 1: Drunk and Disorderly – your sentence is increased to 19 days imprisonment

Count 2: Breach of Bail – your sentence is increased to 2 months and 14 days imprisonment

MITIGATION

21. I am not persuaded that you are truly remorseful.
22. However, you have a family to support and I accept that your aspiration for your family is genuine.
23. You have cooperated with police when interviewed.

Count 1: Drunk and Disorderly – your sentence is reduced to 12 days imprisonment

Count 2: Breach of Bail – your sentence is reduced to 1 month and 14 days imprisonment

GUILTY PLEA

24. I accept that your guilty plea is early.

Count 1: Drunk and Disorderly – your sentence is reduced to 8 days imprisonment

Count 2: Breach of Bail – your sentence is reduced to 1 month imprisonment

SUSPENSION

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

SENTENCE

28. As I have explained, I will not consider any time spent in remand as time served. No more reduction to your sentence will be made.
29. You are sentenced as follows:

Count 1: Drunk and Disorderly – your sentence is reduced to 8 days imprisonment

**I refuse to suspend this sentence in part or in whole.
You will serve this imprisonment term immediately.**

Count 2: Breach of Bail – your sentence is 1 month imprisonment

**I refuse to suspend this sentence in part or in whole.
You will serve this imprisonment term immediately.**

30. I would have sentenced you today in your other cases Tavua CF 240 – 18 and CF 241 -18.
31. I am mindful of the totality principle and the one transaction rule.
32. I order that you serve your sentence in Count 1 and Count 2 consecutive to each other and consecutive to your other sentences.
33. **I am satisfied that a domestic relationship exists. I impose and finalise a domestic violence restraining order [DVRO] with section 27 standard non-molestation conditions on you for the benefit and protection of the victims Ms. Arieta Sadole and her mother Ms Latileta Marama.**
34. Do not breach any of the condition of the DVRO or misbehave towards the victims. If you do, you may be charged and prosecuted for another offence.
35. 28 days to appeal.



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Lisiata T.V. Fotofili
Resident Magistrate

Dated at Tavua this 10th day of January, 2020