

IN THE MAGISTRATES' COURT OF FIJI
AT TAVUA
CRIMINAL JURISDICTION

Criminal Case No: 240 - 2018

STATE

-v-

GABRIEL RATU

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

SENTENCE

BACKGROUND

1. **GABRIEL RATU**, you have pleaded guilty to the following charge [amended on the 22nd of October 2019]:

Statement of Offence

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

Particulars of Offence

GABRIEL RATU on the 29th day of May, 2018 at Tavua in the Western Division whilst released on bail by the Tavua Magistrate Court vide CF 89 – 18 fails to present himself at Tavua Magistrates' Court.

2. I am satisfied that your guilty plea and admission in court is voluntary and that you understand the consequences. The evidence tendered in support of your admission also supports your guilty plea.
3. I have also taken judicial notice of the records in your other file Tavua CF 89 – 18. In that case you are charged with unlawful possession of illicit drugs [cannabis sativa] amounting to 2.2 grams. You were granted bail in that case on the 27th of March

2018 and one of your bail conditions was to reappear in court. You failed to reappear on the 29th of May 2018.

4. You explained in your interview with the police that you forgot your court date. In court you explained that you came to the court premises but did not see your name in the causelist. You left without seeing the registry.
5. There was no reasonable cause for your non-appearance.
6. I find you guilty and convict you of the charge accordingly.
7. I sentenced you in Tavua CF 292 – 18 for one count of damaging property and one count of breaching your bail condition by consuming alcohol. You were sentenced on the 23rd of November 2018. The offences were committed on the 7th of October 2018. That case was committed after this case and so I will not treat you as a first offender.
8. You have been in remand ever since you appeared and that was for good reason. You have failed to reappear when bailed and you have several cases pending and that arose while you were on bail. See for example Tavua CF 241 – 18 [indecent assault] , CF 151 – 19 [drunk and disorderly], and CF 17 – 18 [assault occasioning actual bodily harm] .
9. I will not consider any time you have spent in remand as time served.
10. You seek forgiveness. You regret wasting the court's time. You promise not to reoffend. You have learnt while in remand and that you wish to work and support your family. You have a daughter who is 1 year and 8 months old. You aim to be a good person.

LAW

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

TARIFF

12. 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)].

STARTING POINT

13. Considering the objective seriousness of the offence, a 1 month imprisonment term is selected as a starting point.

AGGRAVATING FEATURES

14. You failed to appear on the subsequent date. The breach was recent.
15. I do not believe your explanation too that you were around the court premises and then left after not seeing your name in the causelist. You are experienced enough to know that you could enquire with the court registry. I believe what you told police in your caution interview that you just forgot the date. Your attempt in court before me to explain away your non-appearance [which is a lie], I hold against you and I will use as an aggravating factor.
16. I increase your sentence to 3 months imprisonment.

MITIGATION

17. I am not persuaded that you are truly remorseful. For one, I do not believe that you were in the court premises as you tried to explain.
18. You have cooperated with police in your interview.
19. You have a family to support and I accept that you have genuine aspirations for your family.
20. I reduce your sentence to 2 months imprisonment.

GUILTY PLEA

21. You have pleaded guilty early.
22. I reduce your sentence to 1 month and 5 days imprisonment.

SUSPENSION

23. 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.
24. 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.
25. Your sentence will be aimed at deterrence and is to punish you adequately.

SENTENCE

26. As I explained earlier, no time spent in remand will be considered as time served.
27. You are sentenced to 1 month and 5 days imprisonment.
28. I am not persuaded to suspend your imprisonment term either in part or in whole.
29. You will serve your sentence immediately.
30. 28 days to appeal.



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Lisiate T.V. Fotofili
Resident Magistrate

Dated at Tavua this 10th day of January, 2020