

IN THE MAGISTRATES' COURT OF FIJI  
AT TAVUA  
CRIMINAL JURISDICTION

Traffic Criminal Case No: 24 - 2019

STATE

-v-

LIVAI WAQA LAWALAWARUA

Before : RM Fotofili L.  
For Prosecution : WPC Chand A. [ Police Prosecution ]  
Accused : In Person  
Date of Sentence : 25<sup>th</sup> February 2020

**SENTENCE**

1. **LIVAI WAQA LAWALAWARUA**, you have pleaded guilty to the following charge:

*Statement of Offence*

**DRIVING MOTOR VEHICLE WHILST THERE WAS PRESENT IN THE BLOOD A CONCENTRATION OF ALCOHOL IN BREATH OF ZERO ALCOHOL [ sic ]:** Contrary to section 105 ( 1 ) ( a ) and 114 of Land Transport Breathe Test and Analysis Regulation 2000.

*Particulars of Offence*

**LIVAI WAQA LAWALAWARUA** on the 13<sup>th</sup> day of June, 2019 at Tavua in the Western Division being a provisional license holder drover a motor vehicle registration number LR 4036 on Vatukoula whilst there was present in 100 millilitres of his blood a concentration of 114.4 milligrams of alcohol which was in excess of zero limit.

2. I am satisfied that your guilty plea is voluntary and that you understand the consequences of your plea. The evidence tendered in support of your guilty plea and your admission in court, supports your guilty plea.

3. I find you guilty and convict you of the charge.
4. You had a provisional driving license at the time. You admit that you were drunk at the time. You had been drinking liquor at home earlier with some others. Around midday, you drove the rental vehicle with one of your friends as a passenger. You were informed to return the vehicle to the owner as the lease had expired. On the way, the tyre of the vehicle got punctured and you veered off the road. You were driving 60 kilometres per hour at the time. You were not present when police arrived at the scene. You had gone home to eat. You later came to the police station voluntarily and your breath was tested on dragger machine 7110. There was 52 micrograms of alcohol per 100 millilitres of your breath.
5. You were arrested and then interviewed under caution by police. You admitted the same in your caution interview.
6. The reading on a breath analysing instrument in microgrammes of alcohol per 100 millilitres of breath is to be multiplied by 2.2 in order to arrive at the number of milligrams of alcohol in 100 millilitres of blood [ section 3 ( 3 ) of the **Land Transport ( Breath Tests and Analyses ) Regulations 2000** ].
7. For any person holding a normal license, the legal limit is 80 milligrams of alcohol in 100 millilitres of blood [ section 3 ( 1 ) of the **Land Transport ( Breath Tests and Analyses ) Regulations 2000** ].
8. For provisional license holders, the legal limit is zero [ 0 ].
9. After calculation, it is established that you had 114.4 milligrams of alcohol in 100 millilitres of your blood.
10. You exceeded your legal limit by approximately 114.4 milligrams.
11. You are a first offender.
12. You have not spent any time in remand.
13. You are 22 years old. Single with no child or no children. You are unemployed.

#### **MAXIMUM SENTENCE**

14. For a first offence, the law allows a court to impose a fine on you which can be up to \$2,000 and or you can be imprisoned up to 2 years. It is mandatory that you are to be disqualified from driving anytime between 3 months even up to 2 years.

## SENTENCING RANGE or SENTENCING TARIFF

15. The courts have not set any sentencing preference or tariff and so the final sentence in each case will be determined by the circumstance of each case within the maximum sentence imposable by law.
16. The Sentencing and Penalties Act 2009 particularly section 4 ( but not limited to ) will guide me when deciding your sentence.

### Starting Point

17. Based on the objective seriousness of the case, I select a starting point of 2 months imprisonment.

### Aggravating Factor

18. I am not provided with sufficient information regarding the damage caused to the vehicle if any. It is open to the relevant parties too, to decide whether to pursue any civil action in relation to that. Besides, the facts you admitted indicate that the tyre of the vehicle got punctured and then you veered off the road. I am unsure whether you would have veered off the road in any event whether sober or drunk.
19. However, I find the level of alcohol in your blood excessive.
20. You also had a passenger while you were driving in your intoxicated state.
21. Your sentence is increased to 9 months imprisonment.

### Mitigating Factors

22. You will get some discount for being a first offender and that you are in your early twenties.
23. You cooperated with police when interviewed.

24. I accept that you are remorseful.

25. Your sentence is reduced to 4 months imprisonment.

### **Guilty Plea**

26. You have pleaded guilty early.

27. Your sentence is reduced to 2 months and 16 days imprisonment.

### **Suspended Term, Disqualification and Non-Conviction**

28. I can suspend your sentence whether in whole or in part pursuant to section 26 ( 1 ) and ( 2 ) ( b ) of the **Sentencing and Penalties Act 2009**, if your sentence is below 2 years imprisonment.

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

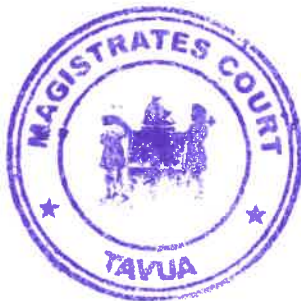
30. For driving with alcohol in your blood while holding a provisional license, it is not optional whether you should be disqualified from driving or disqualified from holding or obtaining a driving license. The law says that it is mandatory. The primary issue is the length of your disqualification.

31. The length of time a person can be disqualified from driving can be determined by assessing the standard of driving shown, any previous traffic violations, the need to protect the public from dangerous or drunk drivers, good character of the defendant and whether there is any serious hardship to the family and whether driving is a source of income [ **State v Joel Sahai** Case No. HAAR 002 of 2017 ( 29<sup>th</sup> August 2017 ) ].

32. Your sentence is aimed at deterrence as is to punish you adequately.

**SUMMARY**

33. No further time will be deducted as you did not spend any time in remand.
34. You are sentenced to 2 months and 16 days imprisonment.
35. I am inclined to suspend this imprisonment term in whole and it will be suspended for the next 2 years. You are not to commit any other offence [ punishable with imprisonment ] in the next 2 years. If you do, this 2 months and 16 days imprisonment held in reserve may be activated.
36. I order that you pay a fine of \$300 and this is to be paid in 35 days. You default and you risk up to 15 days imprisonment.
37. I will give you a date hereafter to check on whether you have paid this fine.
38. You are also disqualified from obtaining or holding a driving license for the next 6 months [ surrender your license ]. Apart from punishing you , another purpose for this disqualification and length of disqualification is to disallow you from driving on our roads for a while for the safety of other road users.
39. 28 days to appeal if you are dissatisfied with your sentence.



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

Dated at Tavua this 25<sup>th</sup> day of February, 2020