

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

Traffic Criminal Case No: 32 - 2019

STATE

-v-

WATISONI KORO

Before : RM Lisiate Fotofili
For Prosecution : WPC Chand A. [Police Prosecution]
Accused : Mr. Samy A. [Legal Aid Commission]
Date of Sentence : 2nd June 2020

SENTENCE

1. **WATISONI KORO**, 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 EXCESS OF THE PRESCRIBED LIMIT: Contrary to section 103 (1) (a) and 114 of Land Transport Breath Test and Analysis Regulation 2000.

Particulars of Offence

WATISONI KORO on the 28th day of August, 2019 at Tavua in the Western Division drove a motor vehicle registration number EM. 540 in Korovou, Tavua whilst there was present in 100 millilitres [sic] of his blood a concentration of 195.8 milligrams of alcohol which was in excess of the prescribed 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, supports your guilty plea.
3. I find you guilty and convict you of the charge.

4. The defendant holds a valid 'full' license. Police were on patrol at around 8.30am when they saw the vehicle driven by the defendant come out of a junction. The defendant was stopped and police noticed that the defendant had the heavy smell of liquor emanating from him. The defendant was informed and escorted to the police station for his breath to be tested. Upon being tested on dragger machine 7110, the result showed that the defendant had 89 micrograms of alcohol per 100 millilitres of his breath.
5. Later, the defendant was interviewed under caution by police. The interview records reveal that the defendant is 32 years old and a farmer. He admits drinking liquor at Korovou. He drank a carton of liquor [Joskes] with 3 others. The defendant at first admitted that he was arrested when he was about to get into the vehicle but then later said that he was arrested after he drove out the vehicle. He admitted having his breath tested by police. He said that he was driving to go home.
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. 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. After calculation, it is established that the defendant had 195.2 milligrams of alcohol in 100 millilitres of his blood.
9. For his license class, the defendant exceeded the legal limit by approximately 115 milligrams.
10. The defendant is a first offender.
11. The defendant has not spent any time in remand.
12. The defendant is 32 years old. He is married with a 7 year and 3 year old child. He is a farmer and earns \$90 weekly. He is the sole breadwinner and supports his elderly parents. He seeks forgiveness and promises not to re-offend. The distance he drove was not long and he was driving for 1 or 2 minutes before he was stopped.

MAXIMUM SENTENCE

13. For a first offence of driving a vehicle whilst there was alcohol in the defendant's breath above the prescribed limit, the law allows a court to impose a fine which can be up to \$2,000 and or imprisonment for up to 2 years.
14. It is mandatory that the defendant must 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 the defendant's 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 do not find the distance that you drove, in your intoxicated state as being lengthy and I will not use this as an aggravating factor.
19. However, I find that you exceeded the legal limit by a relatively high amount. You risked the lives of other road users.
20. Your sentence is increased to 6 months imprisonment.

Mitigating Factors

21. You will get some discount for being a first offender.
22. You cooperated with police when interviewed.
23. I accept that you are remorseful.
24. You have a family to support.
25. Your sentence is reduced to 3 months imprisonment.

Guilty Plea

26. You have pleaded guilty early.
27. Your sentence is reduced to 2 months 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 excess alcohol in the blood, it is not optional whether the defendant 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 disqualification.
31. The length of time a defendant 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 (29th August 2017)].

32. This sentence will be aimed at deterrence as is to punish the defendant adequately.

SUMMARY

33. No further time will be deducted as the defendant did not spend any time in remand.

34. **WATISONI KORO**, you are sentenced to 2 months imprisonment.

35. I am inclined to suspend this imprisonment term in whole and it will be suspended for the next 2 years.

36. Do not to commit any other serious offence or offence punishable with imprisonment in the next 2 years.

37. If you do, this 2 months imprisonment held in reserve may be activated.

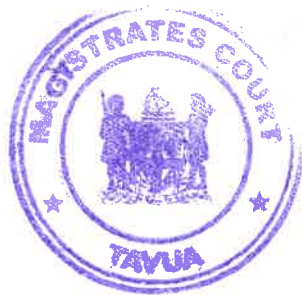
38. I also order that you pay a fine of \$140 and this is to be paid in 35 days.

39. You default and you risk up to 7 days imprisonment.

40. I will give you a date hereafter to check on whether you have paid this fine.

41. You are also disqualified from obtaining or holding a driving license for the next 4 months [surrender your license].

42. 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 2nd day of June, 2020