

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

Criminal Case No: 233 - 2019

STATE

-v-

FRANK SANDY

Before : RM Fotofili L.
For Prosecution : Inspector Lenaitasi S. [Police Prosecution]
Accused : Ms Tavaiqia L. [Legal Aid Commission]
Date of Sentence: 2nd June 2020

SENTENCE

BACKGROUND

1. **FRANK SANDY**, you have pleaded guilty to the following charge:

Statement of Offence

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

Particulars of Offence

FRANK SANDY on the 7th day of October, 2019 at Prakash Building, Tavua in the Western Division, behave in a disorderly manner in a public place.

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. I have found you guilty and I convict you of the charge.
3. It was around 1pm and you were in a billiard shop. You wanted to use the washroom. You were told that it was only for staff. You were told to use the public toilet near the market. You told the person who refused you entry that you will urinate over the railings at the shop. You then urinated as you said and you were recorded on a mobile phone while you were doing your 'business'. You said that you did not care if you were recorded.

4. A complaint was made. You were later arrested and interviewed by police. You admitted drinking some liquor on that day but you were not drunk. You also drank some water and was playing billiard. You wanted to use the washroom but the owner said it was only for the staff. He told you to use the public toilet at the market. You pulled your pants down and asked him again. He refused. You then urinated at the railings at the shop. You said that you 'couldn't hold it any longer'. You knew you were being filmed.
5. The defendant is a first offender.
6. The defendant is in remand but that is because of his other pending cases more serious than this, such as EJR 02 – 18 for aggravated robbery, CF 219 - 19 for theft and CF 231 – 19 for burglary and theft and breaching bail. I will not consider any time you have spent in remand as time served. You had to be remanded in custody.
7. The defendant is a first offender. He was 18 years old at the time he committed the offence. He is still 18 years old. He seeks forgiveness. He promises not to reoffend. He has no child or children. He intends to continue his studies and he wants to be a pastor. Mr Stuart Yagomate is the principal of the Fiji School of Discipleship a school which the defendant attends. The principal stated that the defendant joined on the 16th of February 2019 and has been trained in forgiveness and he is getting lectures in leadership. The Defendant does farm and renovation works.

LAW

8. For a first offence, the defendant is liable to be imprisoned for up to 1 month.

TARIFF

9. There is no sentencing tariff for this offence so each case will determine its own sentence within the maximum imposable.

STARTING POINT

10. Considering the objective seriousness of your case, a 10 day imprisonment term is selected as a starting point.

AGGRAVATING FEATURES

11. You exposed your private part in public and this was in town in the middle of the day. You were urinating. This was disgusting and barbaric and I am sure you would have caused a disturbance to the business.
12. I increase your sentence 20 days imprisonment.

MITIGATION

13. You are not a baby or you do not suffer from a health condition which would prevent you from controlling your bowels or have an unplanned visit to the toilet. You admitted drinking fluid on that day even liquor and it is your responsibility to make sure you plan ahead. I cannot grant you any flexibility regarding your claim that this was an emergency.
14. However, you are a first offender.
15. You are young.
16. I accept that you are remorseful.
17. You have cooperated with police when interviewed.
18. You plan to become pastor.
19. I reduce your sentence to 12 days imprisonment.

GUILTY PLEA

20. I accept that your guilty plea is early and I will reduce your sentence to 8 days imprisonment.

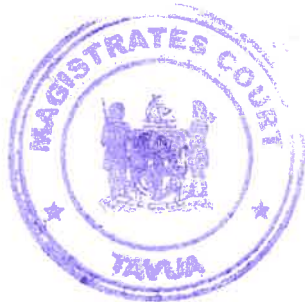
SUSPENSION

21. 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**.

22. 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.
23. Your sentence will be aimed at deterrence, denunciation and to punish you adequately.

SENTENCE

24. You are sentenced to 8 days imprisonment.
25. As I have explained, no time in remand will be considered as time served and I will not deduct this from your sentence.
26. Despite being a first young offender, I refuse to suspend your imprisonment term whether in part or in whole.
27. You will serve your 8 days imprisonment immediately.
28. I am aware of the sentence I passed on you today in CF 231 – 19 for a case of burglary and theft and breach of bail.
29. I have considered the totality principle and the one transaction rule.
30. I order that you serve your 8 days imprisonment, consecutive to your sentence in the other file.
31. 28 days to appeal.



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Lisiata T.V. Fotofili
Resident Magistrate

Dated at Tavua this 2nd day of June, 2020