

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

Criminal Case No: 233 - 2018

STATE

-v-

MELI LOTE

For Prosecution: WPC Chand [Police Prosecution]

Accused: In Person, Waived Right To Counsel

Date of Sentence: 4th day of December, 2018

SENTENCE

BACKGROUND

1. 1. **MELI LOTE**, you are here to be sentenced upon pleading guilty to the following charge:

Statement of Offence

ASSAULT OCCASIONING ACTUAL BODILY HARM: Contrary to section 275 of the *Crimes Act No 44 of 2009*.

Particulars of Offence

MELI LOTE, on the 4th day of August, 2018 at Vatukoula in the Western Division assaulted **PRANEEL PRATAP** thereby occasioning him actual bodily harm.

1. 2. I am satisfied that your guilty plea to the charge is voluntary and that you understand the consequence of your plea.
1. 3. You admit pushing the victim who is your work colleague. He is 30 years old. You pushed his head twice causing the victim to fall. An argument arose and then you punched the victim 3 times on the head and mouth. The incident started when the victim did not line up and had cut in front of the line.
1. 4. Later the same day, the victim was medically examined. Amongst other things, the medical officer observed a laceration to the right forehead of the victim, tenderness to the victim's head and jaw.
1. 5. You were arrested by police and interviewed. You said that the victim did not line up and just 'crashed' the line. You pushed him twice on the shoulder telling him to follow the line. He turned and threw a punch. You retaliated and you punched his head, mouth and jaw.
1. 6. I am satisfied that you hitting the victim was not in self-defence. As you said so yourself in your caution interview, you retaliated. In addition, your multiple punches was excessive.
1. 7. I am satisfied that your guilty plea is supported and I have found you guilty.

1. 8. You are not a first offender. You have a previous conviction for indecent assault in 2006. You were sentenced to 1 year imprisonment but this was suspended for 18 months.

1. 9. In your mitigation you submit that you are remorseful, promise not to re-offend, you are the sole breadwinner in the family, you have a 3 year old daughter and you are 37 years old.

LAW

1. 10. The maximum sentence that is imposable by law for the offence of assault occasioning actual bodily harm is up to 5 years imprisonment.

TARIFF

1. 11. The sentencing tariff for assault occasioning actual bodily harm ranges between a suspended sentence to 9 months imprisonment depending on the degree of provocation and whether any weapon was used [see for example **Randipni Singh v The State** HAA 13 of 2016 (17th June 2016).

STARTING POINT

1. 12. Considering the circumstance of your case, a 4 month imprisonment term is selected as a starting point.

AGGRAVATING FEATURE

1. 13. You hit the victim three times.

1. 14. You hit him on the head and jaw.

1. 15. Your sentence is increased to 7 months imprisonment.

MITIGATION

1. 16. You will not get any reduction for having a good history. You don't.
1. 17. I accept that some strong words and the victim's action contributed to the incident escalating.
1. 18. I accept that you are remorseful too.
1. 19. You have cooperated with police.
1. 20. I take into account but only sparingly that you have a family to look after. The reason for this is that you should have thought about the consequence of your action and the impact it may have on your family before doing what you did. Your family and your children will not be used only when it is convenient.
1. 21. Your sentence is reduced to 4 months imprisonment.

GUILTY PLEA

1. 22. I accept that your guilty plea is early and I will reduce your sentence to 2 months and 2 weeks imprisonment.

SUSPENSION

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

SENTENCE

1. 26. You are sentenced to 2 months and 2 weeks imprisonment.
1. 27. 1 month and 2 weeks imprisonment will be suspended for the next 2 years.
1. 28. Commit any other offence in the next 2 years and this term held in waiting maybe activated.

1. 29. You will serve 1 month imprisonment, immediately.

1. 30. 28 days to appeal.

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Lisiate T.V. Fotofili
Resident Magistrate

Dated at Tavua this 4th day of December, 2018.