

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

Traffic Criminal Case No: 22 - 2018

**STATE**

-v-

**PRASHANT RAM CHETTY**

For Prosecution: Inspector Lenaitasi [ Police Prosecution]  
Accused : Mr Samy [ Legal Aid Commission ]  
Date of Sentence: 29<sup>th</sup> day of October 2018

**SENTENCE**

1. 1. **PRASHANT RAM CHETTY**, you have pleading guilty to the following charge:

*Statement of Offence*

**Driving Motor Vehicle Whilst There Was Presence in the Blood a Concentration of Alcohol In Excess Of The Prescribed Limit:** Contrary to section 103 ( 1 ) ( a ) and 114 of Land Transport Breathe Test and Analysis Regulation 2000.

*Particulars of Offence*

**PRASHANT RAM CHETTY**, on the 16<sup>th</sup> day of November, 2017 at Tavua in the Western Division drove motor vehicle registration number BI 101 on Kings Road Tavua town whilst there was present in 100 millilitres of his blood a concentration of 136.6 milligrams of alcohol which was in excess of the prescribed limit.

1. 2. I am satisfied that your guilty plea is voluntary and that you understand the consequences of your plea.
1. 3. I have found you guilty accordingly.
1. 4. You admitted the facts which revealed that police stopped you at a road block being suspicious with your manner of driving.
1. 5. You were escorted to the Tavua Police Station where you were tested on dragger alcotest 7110. There was 62 micrograms of alcohol per 100 millilitres of your breath.
1. 6. The prescribed concentration of alcohol or legal limit is 80 milligrams of alcohol in 100 millilitres of blood.
1. 7. The reading on a breath analysing instrument in microgrammes of alcohol per 100 millilitres of breath is to be multiplied by 2.3 in order to arrive at the number of milligrams of alcohol in 100 millilitres of blood [ section 3 of the **Land Transport ( Breath Tests and Analyses ) Regulations 2000.**
1. 8. After calculation, you exceeded the legal limit by approximately 62 milligrams.

1. 9. When you were questioned by police in relation to the incident, you said that you drank 7 bottles of beer. You admitted that you were tested and you admitted that the result of your breath test was the same shown to you during your interview.
1. 10. You have no previous conviction.
1. 11. You spent 1 night in police custody and you have not spent any time in remand.
1. 12. In your mitigation you promise not to re-offend. You are 20 years old. You have pleaded guilty early. From your pay, you support your family by paying for household expenses and you look after your sickly mother. You tell me that your mother suffers from migraines and high blood pressure. She is 45 years old. You don't have a medical report for her current health condition.

#### **MAXIMUM SENTENCE**

1. 13. 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 and being mandatorily disqualified from driving between 3 months even up to 2 years.

#### **SENTENCING RANGE or SENTENCING TARIFF**

1. 14. The courts have not set any sentencing preference or tariff for this type of offence and so the final sentence in each case will be determined by the circumstance of each case.

#### **Starting Point**

1. 15. In your case, I select a starting point of 2 months imprisonment.

#### **Aggravating Factor**

1. 16. You exceeded the prescribed limit by approximately 62 milligrams.
1. 17. Your sentence is increased to 3 months imprisonment.

#### **Mitigating Factors**

1. 18. You are young and you have no previous conviction.
1. 19. You will receive some reduction for cooperating with the police when they questioned you.

1. 20. I don't consider your family circumstance to be of any value in mitigation and I don't accept that your mother is in serious need of medical attention as you would like to suggest.

1. 21. Your sentence is reduced to 2 months imprisonment.

#### **Time In Remand / Custody**

1. 22. I will not consider the 1 night you spent in police custody as time served. This was necessary, especially for the protection of other road users and to allow police to complete their investigation. The situation was created by you.

1. 23. You have not spent any time in remand and so no time will be deducted for this.

#### **Guilty Plea**

1. 24. You have pleaded guilty early.

1. 25. Your sentence is reduced to a 1 month imprisonment term.

#### **Suspended Term and Disqualification**

1. 26. 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.

1. 27. Considering the circumstance of your case, I will suspend your sentence in whole.

1. 28. I will still impose a fine on you.

1. 29. Your sentence is aimed at deterrence, is to punish you and also to give you a chance to serve your sentence outside prison and prove yourself.

1. 30. 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)].

#### **SUMMARY**

1. 31. Your final sentence is this:

**Your 1 month imprisonment term is suspended for the next 1 year.**

**Commit any other offence in the next 1 year and this 1 month imprisonment term held in waiting maybe activated.**

**You are fined \$200 to be paid in 28 days. In default, 7 days imprisonment.**

**You are disqualified from driving for 3 months effective from today.**

**[ surrender your license ]**

1. 32. 28 days to appeal.

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

Dated at TAVUA this 29<sup>th</sup> day of October, 2018.

Sentence - State v Prashant Ram Chetty CF 22 - 18 Tavua