

IN THE MAGISTRATES' COURT OF FIJI
AT TAVUA
CRIMINAL JURISDICTION

Criminal Case No: 331 - 2018

STATE

-v-

ISEI NAQIA

Before : RM Fotofili L.
For Prosecution : WPC Chand A. [Police Prosecution]
Accused : In Person, Waived Right To Counsel
Date of Sentence : 20th August 2019

SENTENCE

1. **ISEI NAQIA**, you have pleaded guilty to the following charge:

Statement of Offence

THEFT: Contrary to section 291 (1) of the *Crimes Act of 2009*.

Particulars of Offence

ISEI NAQIA, between 3rd November to the 18th of November, 2018 at Tavua, in the Western Division, with the intention to dishonestly appropriated [sic] Maxton Stereo valued at \$800.00, Fishing Gear valued at \$300.00, Blue Carry bag valued at \$30.00, A Samsung Charger valued at \$15.00, T-Shirt valued at \$40.00 all to the total value of \$1,185.00 the property of **AISAKE PAULA** with the intention of permanently depriving the said **AISAKE PAULA**.

2. I am satisfied that your guilty plea is supported by the evidence tendered in support of your guilty plea and your admission in court. I am also satisfied that you understand the consequences of your plea.
3. I convict you of the charge accordingly.
4. The victim only discovered later after seeing his house open and light left on, that his items mentioned in the particulars of the charge was missing from his home.

5. During the course of police investigation, you were arrested and interviewed by police. You admitted entering the house by removing 3 louver blades. You admit taking a charger, a radio and a bag. You denied taking the fishing equipment. You placed the items you stole into a bag. You identified the person who you later gave the radio too. You said you heard police were looking for you and that is why you gave away the radio. You identified the radio to police when it was shown to you during your interview. You don't know what happened to the Tshirt.
6. On the day you pleaded guilty, you admitted stealing so you could sell the items. In court you admitted stealing the fishing gears although you do not admit that in your interview with police. You say that you have used the fishing gear.
7. You have paid \$340 into court as costs or compensation to the victim.
8. The prosecution accept that the bag, stereo and phone charger has been recovered.
9. I have already ordered the release of these items to the owner pursuant to section 155 (1) (c) of the Criminal Procedure Act 2009. That was done on the 30th of November 2018.
10. The \$340 paid into court will have to be released to the victim and the prosecution is to advise the victim accordingly.
11. I will not consider any time you have spent in remand as time served. You were granted bail on the 30th of November 2018 which is the first day you appeared in court. After being bailed, you did not reappear on the subsequent date which was on the 18th of March 2019. Your explanation for your non-appearance was that you stayed in the interior and you could not get transport. This explanation was woefully unsatisfactory. You had to be remanded in custody as you cannot be relied upon to reappear.
12. You are a first offender.
13. You are 25 years old. Your wife is 6 months pregnant. You are a farmer. You seek forgiveness. You have cooperated with police.

MAXIMUM SENTENCE

14. The maximum punishment for theft is 10 years imprisonment.

SENTENCING RANGE or SENTENCING TARIFF

15. The sentencing tariff for theft is as follows [Ratusili v State [2012] FJHC 1249; HAA011.2012 (1 August 2012)] :

(i) for a first offence of simple theft the sentencing range should be between 2 and 9 months.

(ii) any subsequent offence should attract a penalty of at least 9 months.

(iii) Theft of large sums of money and thefts in breach of trust, whether first offence or not can attract sentences of up to three years.

(iv) regard should be had to the nature of the relationship between offender and victim.

(v) planned thefts will attract greater sentences than opportunistic thefts.

STARTING POINT

16. Based on the objective circumstance of your case, I select a starting point of 5 months imprisonment.

AGGRAVATING FEATURES

17. You stole from inside the victim's house. The prosecution have not charged you with burglary. It is an electable offence and I will only have jurisdiction once you have made your election. You have not exercised your election, obviously as you are only charged with theft. I cannot use the fact you stole from inside the victim's house as an aggravating feature or for any other purpose in your sentence.

18. I find the value of the items to be extensive.

19. Your aim was to sell the items.

20. Your sentence is increased to 10 months imprisonment.

MITIGATION

21. You are a first offender.

22. You have paid \$340.

23. I accept that you are remorseful.

24. You have a family to look after.

25. You have cooperated with police but only in part. You did not admit to them you had taken the Tshirt and fishing gears.

26. Your sentence is reduced to 5 months imprisonment.

GUILTY EARLY

27. I accept that your guilty plea is early and I reduce your sentence to 3 months and 14 days imprisonment.

FINAL SENTENCE

28. As explained, I will not reduce your sentence further for any time spent in remand.

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

30. Your sentence is 3 months and 14 days imprisonment.

31. I will suspend your sentence but only in part.

32. 2 months is suspended for the next 2 years. Do not commit any other offence punishable with imprisonment in the next 2 years. If you do, this 2 months imprisonment held in waiting maybe activated.

33. You will serve 1 month and 14 days imprisonment immediately.

34. 28 days to appeal to the High Court if you are dissatisfied with your sentence.



Lisiate T.V. Fotofili

Resident Magistrate

Dated at Tavua this 20th day of August 2019