

IN THE MAGISTRATES' COURT OF FIJI
AT NADI
EXTENDED CRIMINAL JURISDICTION

High Court Criminal Case No. 51 of 2015
Criminal Case No. 256 of 2015

STATE

v.

VETAIA QEREQERETABUA

For the State: Corporal Bola

For the Accused: In Person

SENTENCE

1. You are charged with one count of **ROBBERY** contrary to section 310 (1)(a)(i) of the **CRIMES ACT 2009** in that you on the "26th day of March 2015 at Nadi in the Western Division robbed **VIKASH NADAN** of a wallet valued at \$40.00 and a bag of clothes valued at \$100.00, the property of **VIKASH NADAN** and immediately before such robbery did use force to the said **VIKASH NADAN.**"
2. On 26 November 2019, this criminal proceeding was fixed for trial to 28 February 2020. The matter was then adjourned to 11 December 2019 to provide your counsel with a new set of disclosures. On 11 December 2019, you indicated that you waived your right to counsel. You indicated that you wished to change your plea. In answer to my questions whether anyone had forced you or promised you anything in order to or in exchange for your guilty plea, you indicated both times that you were pleading guilty of your own free will.

3. Your Charge was then read out to you again and you indicated that you understood the Charge and that you pleaded guilty of your own free will. The Summary of Facts were then read out in open Court on 12 December 2019 and you indicated that you understood and admitted those Facts.
4. The Facts show that on 26 March 2015 **VIKASH NADAN** had been drinking with some friends when you came up to him and asked him for drinks and some cash. You were a student at that time and had been intoxicated. Whilst asking **NADAN** for drinks and cash you punched him and while **NADAN** lay on the ground following your assault, you robbed him of his wallet and bag of clothes and you then fled the scene. **NADAN** received injuries and reported the matter. You were located at After Dark Night Club and were brought in for questioning. You denied the commission of the offence. The items stolen were never recovered.
5. The State tendered **NADAN**'s medical report. It showed that he had received a swollen jaw as a result of your assault. You viewed that medical report and accepted that you had caused those injuries by your actions during the course of the robbery.
6. I find you guilty and I convict you of **ROBBERY** contrary to section 310 (1)(a)(i) of the **CRIMES ACT 2009** as charged.

MAXIMUM SENTENCE & TARIFF

7. The maximum penalty for this offence is imprisonment for 15 years.
8. A tariff for this offence was established in **Rarawa v. State** [2015] FJHC 324; HAA05.2015 (30 April 2015) as follows:
 - (i) Robbery (but with concomitant violence): 8 – 14 years
 - (ii) Robbery (without violence): 2 – 7 years.
9. In **Raisokula v. State** [2018] FJHC 148; HAA24.2017 (2 March 2018), Perera J. offered this clear guideline in respect of **Rarawa**:

“67. .. there is no clear guidance that specifies the degree and the nature of force that would constitute “violence” in a case of robbery for the purpose of

deciding whether a particular offending would come under the aforementioned tariff in question.

68. The sentencing courts before selecting the said tariff should be cautious to first satisfy that the offending involved violence based on the evidence in the case that would justify applying that tariff where the starting point of the sentence should be at least 8 years.”

AGGRAVATING FACTOR

10. You injured your victim. As a result of your actions, **NADAN** suffered a swollen jaw on top of the assault on his person and the loss of his property.
11. You committed this crime while under a state of self-induced intoxication and this caused you to behave in a violent and somewhat erratic manner that night.

MITIGATING FACTORS

12. You are 27 years old. You are single and have no children I am given to understand. You filed comprehensive mitigation submissions on your own behalf.
13. Explaining your personal circumstances, you say that from the day you were born you have not had much contact with your father, who was often away in the Middle East. As a consequence of that you have not had a male mentor or father figure to emulate. Moreover, you say that as a child growing up in a particular locale in Suva, you were exposed at an early age to drugs and crime.
14. You indicate that the robbery was not pre-planned in any way. You indicate it was a crime brought about by your drinking. You indicate that you are genuinely remorseful for your actions. You say that you are currently serving a 3 year term for *aggravated robbery* and you indicate that it is difficult if not impossible to rehabilitate yourself while in prison.
15. You indicate you have the capacity to work and improve and in support of this you indicate that you completed Modules for Carpentry Training at the National Training and Productivity Center at the Fiji National University in 2017, worked as a carpenter

for *Bhai Builders* in Nadi in 2017 and 2018 and you were a student undertaking Aviation Studies in Nadi in 2015. In 2018 you enrolled at the University of Fiji and undertook Semester 2. You annexed your results and they show that you studied Spoken Hindi for Beginners and attained a C; Law for Beginners and attained a C+, English for Academic Purposes and attained a B and Social Research and attained a B+ in that period.

16. You attached the Sentence that you are currently serving. It is for a crime that you committed in 2012. You entered a plea of guilty for this 2015 offence and in doing so you saved the Court time, the State the resources it would have otherwise expended in running a full trial, and you permit your victim to receive justice without the trauma of reliving the events of that day at trial.
17. I accept that you were in remand for 6 months for this matter.

SENTENCING

18. Sentencing in Fiji requires me to pick a starting point from the middle to bottom end of established sentencing tariffs. By that rule, the tariff that applies is imprisonment for 8 – 14 years.
19. I decline to do so here. Sentencing is not a mathematical exercise. I accept it must be principled and in instances where a new tariff has been identified after careful consideration of sentences for the same offence over a period of time handed down by error-free courts, or because we have too rigidly confined ourselves to the numbers we have picked over a period of time and appellate courts hold that old tariffs no longer meet the ends of justice, starting points ought to be selected from the bottom to middle range therein.
20. However, I am uncomfortable following a range that has been selected by one person alone.
21. The tariff for **Aggravated Robbery** is 8 – 16 years: *Wallace Wise v The State*, Criminal Appeal No. CAV 0004 of 2015; (24 April 2015). The top end for **Theft** is 3 years: **Ratusili v. State** [2012] FJHC 1249; HAA011.2012 (1 August 2012) at [13

(iii)]. These are useful authorities to look at because **Robbery**'s constituent parts involve a combination of **Theft** and **Assault**.

22. In interesting and relevant juxtaposition, particularly in light of the wide sentencing discretion available to a sentencing court in Fiji and in light of the wide range of sentencing options given to sentencing courts by Parliament as provided for under the **Sentencing and Penalties Act 2009**, Finlay C.J of Ireland in *The People (DPP) v. Tiernan* [1988] IR 250 held:

"Furthermore, having regard to the fundamental necessity for judges in sentencing in any form of criminal case to impose a sentence which in their discretion appropriately meets all the particular circumstances of the case (and very few criminal cases are particularly similar), and the particular circumstances of the accused, I would doubt that it is appropriate for ...court to appear to be laying down any standardisation or tariff of penalty for cases."

23. The missing words are "an appellate" as in "an appellate court" and it is removed here for the purposes of these Sentencing Remarks because I believe it has general application. Let the punishment meet the circumstances of both case and criminal¹.

24. You punched a man and took a wallet and some clothes from him. The total value of these items were \$140.00. Having regard to the clear caution set out for our benefit by Perera J. in **Raisokula**, supra and striving in my own way to be as principled as I can, I pick a starting point of imprisonment for 3 years. In its own way, your circumstances are a more serious incident of theft equivalent in objective seriousness to a breach of trust or a planned theft. I increase this sentence by 2 years for the aggravating factors apparent here. Your sentence is now imprisonment for 5 years.

25. I decrease your sentence nominally by 1 month for your personal circumstances. Your sentence is now imprisonment for 4 years and 11 months. I further decrease your sentence by 18 months for your guilty plea. It was not a guilty plea at the earliest available opportunity but there is much social utility gained through the entering of your guilty plea. Your sentence is now imprisonment for 3 years and 5 months.

¹ Section 4 of the **Sentencing and Penalties Act 2009**.

26. You were remanded for a period of 6 months. Pursuant to section 24 of the **Sentencing and Penalties Act 2009** I declare these 6 months, time already served. As such, your head sentence is imprisonment for 2 years and 11 months. Pursuant to section 18 (3) of the **Sentencing and Penalties Act 2009**, I fix a minimum non-parole period of imprisonment of 12 months. This is time you must serve before you are eligible for parole or remission. The non-parole period is fixed with aim of your rehabilitation in mind.

27. Moreover, I order that this term be served wholly concurrent to your present term in prison.

28. You are 27 years old. You are not a first offender but you engaged in these criminal acts in 2012 to 2015 and subsequently, made a concerted and increasingly successful effort to rehabilitate yourself before the sins of your past rightly caught up with you. It is my hope that you will not permit the period spent in prison to derail the progress you were making prior to your incarceration. I draw to your attention to William Ernest Henley's *Invictus*.

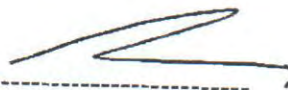
RESULT

29. In the result, and for the reasons set out above, I convict you of **ROBBERY** and I sentence you to imprisonment for 2 years and 11 months with a non-parole period of 12 months.

30. This sentence is to be served concurrently with your current sentence.

31. Any party dissatisfied with this sentence is at liberty to appeal to the Court of Appeal within 30 days.




Seini K Puamau
Resident Magistrate

Dated at Nadi this 13th day of ~~November~~ ^{December} 2019.