

IN THE MAGISTRATES' COURT OF FIJI
AT TAVUA
CRIMINAL JURISDICTION

Criminal Case No: 72 - 2019

STATE

-v-

PENI WAQANIBAU

For Prosecution : WPC Chand A. [Police Prosecution]
Accused : In person, waived right to counsel
Date of Sentence: 30th April 2019

SENTENCE

1. **PENI WAQANIBAU**, 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

PENI WAQANIBAU on the 05th day of March, 2019 at Tavua Town in the Western Division dishonestly appropriated a \$100.00 cash, the property of **Chin Samy**, with the intention of permanently depriving the said **Chin Samy** of the said property.

2. You have pleaded guilty to the charge and I am satisfied that your guilty plea is supported by the evidence tendered in support of that 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 69 year old victim was withdrawing \$100 cash of his welfare money from an ATM. It was around 7.45am. You came and stood beside him. You pressed some buttons, gave him a slip and then you ran away with his \$100.
5. You were arrested by police. \$100 was recovered from you. In your interview with police you admitted being in town. You went to check your balance and that is when

you saw the \$100 at the ATM. You took it and ran away. You said that the \$100 comprised of 2 x \$50 notes. You identified the same when it was shown to you during your police interview.

6. The money recovered was or is in police custody. The court has ordered the return of this money to the victim and this was done on the 7th of March 2019 pursuant to section 155 (1) (c) of the **Criminal Procedure Act 2009**.
7. You have been in remand for 54 days which I would equate to 2 months.
8. You have no previous conviction.
9. In your mitigation, you seek forgiveness. You are 33 years old. You are married with 3 children. Your wife gave birth recently. You say that you have learnt a lot while in remand. You are the sole breadwinner.

MAXIMUM SENTENCE

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

SENTENCING RANGE or SENTENCING TARIFF

11. 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

12. Based on the circumstance of your case, I select a starting point of 3 months imprisonment.

AGGRAVATING FEATURES

13. This was done in a public place in broad daylight.
14. You stole from an elderly and already vulnerable victim.
15. Your sentence is increased to 9 months imprisonment.

MITIGATION

16. I accept that you are remorseful.
17. You have a family to look after.
18. You cooperated with police.
19. You have no prior conviction.
20. The money has been recovered.
21. Your sentence is reduced to 4 months imprisonment.

GUILTY EARLY

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

FINAL SENTENCE

23. Your sentence is 2 months and 2 weeks imprisonment.
24. You have spent 2 months in remand and I will consider this as time served.
25. You have 2 weeks imprisonment remaining.
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** as long as your sentence is below 2 years imprisonment.
27. I am not persuaded to suspend your sentence in whole or in part.
28. Your sentence will be aimed at deterrence and to punish you adequately.
29. You will serve your remaining 2 weeks imprisonment term, immediately.
30. 28 days to appeal.



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Lisiate T.V. Fotofili

Resident Magistrate

Dated at Tavua this 30th day of April 2019.