

IN THE MAGISTRATES' COURT OF FIJI
AT TAVUA
CRIMINAL JURISDICTION

Criminal Case No: 59 - 2019

STATE

-v-

PETERO RATOTO

Before : RM Fotofili L.
For The Prosecution : WPC Chand A. [Police Prosecution]
For The Defendant : Ms. Henao G. [Legal Aid Commission]
Date of Sentence : 17th August 2020

SENTENCE

1. **PETERO RATOTO**, you have pleaded guilty to the following offences :

Count 1

Statement of Offence

THEFT: Contrary to section 291 (1) of the **Crimes Act No. 44 of 2009**.

Particulars of Offence

PETERO RATOTO on the 2nd day of February, 2019 at Tagitagi, Tavua in the Western Division dishonestly appropriated a light brown billy goat valued at \$80 and a white and black billy goat valued at \$80, to the total value of \$160 the property of **MELAIA VOUVOU**, with the intention of permanently depriving the said **MELAIA VOUVOU** of the said property.

Count 2

Statement of Offence

BREACH OF BAIL CONDITION: Contrary to section 25 (1) (b) and 26 (1) of the **Bail Act Number 26 of 2002 and Bail Amended Act No. 28 of 2012**.

Particulars of Offence

PETERO RATOTO on the 3rd day of February, 2019 at Tagitagi, Tavua in the Western Division being bailed by Tavua Magistrate Court vide Case No. 26/18 Breached the Bail Condition by not complying with the bail condition imposed by the Tavua Magistrate Court which was not to re-offend.

2. Your plea and admission to both counts is supported by the evidence tendered and the facts you have admitted. I am also satisfied that you understand the consequence of your guilty plea.
3. I have also taken judicial notice of the bail condition imposed on you in your other pending case CF 26/18 and the court record therein.
4. I find you guilty of both counts above and convict you accordingly.
5. The two goats the subject of the first count were tethered after they were found grazing on another person's vegetable farm. The defendant became aware of the tethered goats and although he knew they belonged to someone else, the defendant took both the goats and sold them for \$70. The matter was reported to police and the defendant was subsequently arrested.
6. The defendant was interviewed under caution by police. in his police interview, the defendant was advised by his brother in law that two goats had damaged their plantation and the two goats were tied up and have been tied up for a long time. The defendant told police in his interview that he asked who the goats belonged to and his brother in law replied that he did not know. The defendant said that he then sold the goats for \$55 each to a taxi driver. Both goats were males with one coloured black and white and the other was greyish white. A photo of the goats was shown to the defendant to which the defendant admitted that they were the ones he sold. The defendant has used the money he obtained after selling the goats and used the money to buy grog.
7. An order was made on the 22nd of February 2019 to have the goats returned to the owner and the order was made pursuant to section 155 (1) (c) of the **Criminal Procedure Act 2009**.
8. The third party buyer or the taxi driver can still pursue civil action against the defendant for the loss he incurred assuming he is a *bonafide* third party buyer.

9. When the defendant stole the goats on the 2nd of February 2019 he was supposed to be observing bail conditions at the time for another of his case Tavua CF 26 – 2018 which is also a case of theft. The defendant was required not to reoffend while on bail. The defendant was imposed that bail condition on the 12th of February 2018. The defendant breached that condition when he stole the two goats.
10. The defendant is a first offender.
11. The defendant was remanded in custody between the 22nd of February 2019 and the 9th of July 2019 which I calculate to be 4 months and 17 days being remanded. I will consider this time in remand as time served.
12. The defendant is 29 years old. He is married and has two children who are 4 years and 2 years respectively. He seeks another chance. He promises to look after his family. He seeks forgiveness. He has learnt a lot while in remand.
13. No compensation has been offered or made by the defendant for the loss incurred by the taxi driver or third party buyer.

MAXIMUM SENTENCE

14. The maximum punishment for theft is up to 10 years imprisonment.
15. The maximum punishment for breaching a bail condition can be a fine of up to \$2,000 and or imprisonment up to 12 months.

SENTENCING RANGE or SENTENCING TARIFF

16. 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.

17. The sentencing tariff for breaching a bail condition and absconding bail are the same. It is between a suspended sentence to 9 months imprisonment [see for example - **Ulumatai v State** [2019] FJHC 114; HAA90.2018 (22 February 2019)].

STARTING POINT

18. Based on the objective seriousness of the offence, I select the following starting points:

Count 1 – Theft : 3 months imprisonment

Count 2 – Breach of Bail : 28 days imprisonment

AGGRAVATING FEATURES

19. You sold the goats and you caused a loss to a third party buyer. I accept the loss to be \$110 or \$55 for each goat as you have admitted in your police caution interview.
20. I do not see any aggravating factor for the breach of bail count.
21. As a result:

Count 1 – Theft : I increase your sentence to 4 months imprisonment

Count 2 – Breach of Bail : Your sentence remains at 28 days imprisonment

MITIGATION

22. You are a first offender.
23. You cooperated with police when interviewed.

24. You have a family to support.
25. You are remorseful.
26. I reduce your sentence as follows:

Count 1 – Theft : I reduce your sentence to 56 days imprisonment

Count 2 – Breach of Bail : I reduce your sentence to 15 days imprisonment

GUILTY PLEA

27. You have pleaded guilty at the earliest reasonable opportunity.

Count 1 – Theft : I reduce your sentence 38 days imprisonment

Count 2 – Breach of Bail : I reduce your sentence to 10 days imprisonment

FINAL SENTENCE

28. **PETERO RATOTO**, your sentence will be aimed at deterrence and is to punish you adequately.
29. Your sentence is as follows:

Count 1 – Theft : 38 days imprisonment

This sentence is suspended but only in part. You will serve 18 days imprisonment and the remaining 20 days imprisonment will be suspended for the next 12 months.

Count 2 – Breach of Bail : 10 days imprisonment

I refuse to suspend this either in part or in whole.

30. You have spent 4 months and 17 days in remand and I will consider this as time served and I will apply this to your sentence above and your punishment above is below or within the time you have already spent in remand.

31. You are not required to serve or comply with any punishment I have outlined in paragraph 29 above.
32. I convict you but discharge you from any further punishment pursuant to section 15 (1) (h) of the Sentencing and Penalties Act 2009.
33. 28 days to appeal to the High Court if you are dissatisfied with your sentence.



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Lisiate T.V. Fotofili

Resident Magistrate

Dated at Tavua this 17th day of August, 2020