

IN THE MAGISTRATES' COURT OF FIJI  
AT TAVUA  
CRIMINAL JURISDICTION

Criminal Case No: 231 - 2019

STATE

-v-

FRANK EDWARD STEVEN SANDY

Before : RM Fotofili L.  
For Prosecution : IP Lenaitasi S. [ Police Prosecution ]  
For Defendant : Ms Henao G. [ Legal Aid Commission ]  
Date of Sentence : 2<sup>nd</sup> June 2020

**SENTENCE**

1. **FRANK SANDY**, you have elected a Magistrates' Court trial and pleaded guilty to the following charge:

**First Count**

*Statement of Offence*

**BURGLARY**: Contrary to section 312 ( 1 ) of the *Crimes Act of 2009*.

*Particulars of Offence*

**FRANK EDWARD STEVEN SANDY**, on the 12<sup>th</sup> day of October, 2019 at Main Street Tavua Town in the Western Division, entered into the dwelling house of **SATISH KUMAR** as a trespasser with intent to commit Theft.

**Second Count**

*Statement of Offence*

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

*Particulars of Offence*

**FRANK EDWARD STEVEN SANDY**, on the 12<sup>th</sup> day of October, 2019 at Main Street Tavua Town in the Western Division, dishonestly appropriated ( stole ) an Acer brand laptop with charger and mouse valued at \$1,200, a piggy bank valued at \$4, a Titan

brand silver watch valued at \$300, a 22 ct gold bracelet valued at \$600, a black and orange blanket valued at \$10 and cash \$500, all to the total value of \$2,614, the property of **SATISH KUMAR**, with the intention of permanently depriving the said **SATISH KUMAR** of his properties.

**Third Count**  
*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 Amendment Act No. 28 of 2012.*

*Particulars of Offence*

**FRANK EDWARD STEVEN SANDY**, on the 12<sup>th</sup> day of October, 2019 at Tavua Town in the Western Division breached the condition of bail by not complying with the curfew order, a condition imposed by Tavua Magistrate Court vide Case File Number: 219/19.

2. I am satisfied that your plea to the counts is voluntary and that you understand the consequences of your plea. The evidence tendered in support of your admission also supports your plea and I have taken judicial notice of the record in your other file Tavua CF 219 – 19 which is the subject of the third count.
3. I have found you guilty of all 3 counts and I convict you accordingly of these counts.
4. The 36 year old victim has a flat in town. Earlier in the morning he left for Suva. He returned at 10 pm to find the mosquito screen to his window torn and his things inside his house scattered. He found the items listed in the particulars of the second count missing. The victim reported the matter to police. At about 1 am the police while on patrol, arrested the defendant who was in town. He had some of the victim's items with him at the time. A dental receipt in the name of the victim was also in the possession of the defendant and this receipt is normally kept inside the bedroom drawer of the victim. CCTV footage from a nearby shop near the victim's flat shows an Itaukei male taking some items wrapped in a cloth.
5. When the defendant was interviewed under caution by police, the defendant admitted drinking liquor in town after 6pm. He then went to a building in town. He said that he wanted to use the washroom but then he said that he went there for no reason. The defendant also admitted seeing a window open and he entered. The defendant saw a green piggy bank on the shelf in the kitchen, he also saw a laptop with a charger and mouse and a silver and gold bracelet. The defendant used a blanket and wrapped the items inside it together with some coins. The defendant

went to another building and melted the piggy bank and took some money. He then went to buy more liquor. He hired a taxi and went back to where he left the items at a building to count the money. Police arrived so the defendant took some money, a charger and watch in the blanket at ran. He left the laptop behind. He was followed by police and on the way, the defendant dropped a plastic which was picked up by police. The defendant was later arrested by police. During his interview, the defendant showed police the route he took. When police showed the defendant a black and orange blanket, the defendant admitted it is the same one he had stolen.

6. I accept that the defendant gave his answers in his interview voluntarily and that his answers are true.
7. The prosecution accept that the following has been recovered:
  - \$221.87 cents
  - 1 Titan wrist watch
  - 22 carat gold bracelet
  - 3 computer mouse
  - 1 laptop Acer brand laptop
  - 1 gas lighter
  - 1 car key
  - 2 \$7 recharge cards
  - 1 black and orange blanket
  - 1 packet of matches
8. The defendant does not have any objection if the items above are returned to the victim.
9. Some of the items above are not listed in the particulars of the second count but I have no reservation that these belong to the victim.
10. Pursuant to section 155 ( 1 ) ( c ) of the Criminal Procedure Act 2009, I order the return of these properties to the victim as soon as practicable.
11. Prosecution is to advise the victim accordingly.
12. CF 219 – 19 is the subject of the third count. In that case, the defendant is charged with theft. He was produced under police custody before me on the 30<sup>th</sup> of September 2019. I granted the defendant bail despite the prosecution's objection. One of the defendant's bail condition was a daily curfew and he was to remain indoors between 6 pm and 6 am. He was also ordered not to reoffend while on bail. The curfew condition was in effect when he committed the offence of burglary and theft on the 12<sup>th</sup> of October 2019. As the defendant explained in his own caution interview, he was out drinking after 6pm and then entered the victim's house.

13. There was no lawful justification for breaching the curfew condition.
14. The defendant has been in remand since the 17<sup>th</sup> of October 2019. He had to be remanded considering the number of cases he had pending such as EJR 02 – 18 for aggravated robbery and CF 219 - 19 for theft and that he ostensibly breached his bail which is the subject of the third count. I will not consider any time spent in remand as time served.
15. The defendant is a first offender. He was 18 years old at the time he committed the offence. He is still 18 years old. He seeks forgiveness. He promises not to reoffend. He has no child or children. He intends to continue his studies and he wants to be a pastor. Mr Stuart Yagomate is the principal of the Fiji School of Discipleship a school which the defendant attends. The principal stated that the defendant joined on the 16<sup>th</sup> of February 2019 and has been trained in forgiveness and he is getting lectures in leadership. The Defendant does farm and renovation works.

#### **AGGREGATE SENTENCE**

16. The first and second counts were committed in the course of the same transaction or founded on the same facts.
17. Pursuant to section 17 of the **Sentencing and Penalties Act 2009**, I will impose an aggregate sentence on the defendant for the first and second counts.
18. Since burglary is the most serious of the counts, I will use that as the foundation when passing your aggregate sentence for the first and second count.
19. I will sentence you respectively for the third count of breaching your bail condition as that count deserves its own sentence.

#### **MAXIMUM SENTENCE**

20. The maximum sentence a court can impose for burglary is up to 13 years imprisonment.
21. The maximum sentence that is imposable by law for the offence of breaching or absconding bail can be a fine of up to \$2,000 and or imprisonment up to 12 months.

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

22. The sentencing tariff for burglary is between 20 months to 6 years imprisonment **State v Prasad** - Sentence [ 2017 ] FJHC 761; HAC 254.2016 ( 12 October 2017 ).
23. The courts sentencing preference for breaching bail is by imposing a suspended sentence even up to 9 months imprisonment [ **Koroimeca v State** [2019] FJHC 20; HAA74.2018 ( 29 January 2019 ) ].

### **STARTING POINT**

24. Based on the objective seriousness of the offence, I select an aggregate starting point of 2 years imprisonment for the first and second count.
25. I select 2 months imprisonment for the third count.

### **AGGRAVATING FEATURES**

26. I find that the value of the items you stole is considerable.
27. Not all of the items have been recovered. Particularly, the laptop of the victim valued at \$1,200. Sometimes the value is in the information that is stored in such devices and it is not necessarily the monetary value of the item.
28. You entered the home at night.
29. You tore the mosquito screen of the window.
30. For the first and second counts, I increase your aggregate sentence to 3 years and 6 months imprisonment.
31. You breached your bail condition within 14 days of being bailed.
32. You breached your bail in-order that you commit an offence. You were also drinking outside near the tramline in defiance of your curfew. You demonstrate having a cavalier attitude towards your bail obligation.
33. I increase your sentence for the third count to 4 months imprisonment.

### **MITIGATION**

34. You are a first offender.
35. You are young.
36. You have cooperated with police during your interview.
37. Some items have been recovered.
38. You are remorseful.
39. You may return to your course to become a pastor.
40. I reduce your aggregate sentence for the first and second count to 2 years and 10 months imprisonment.
41. I reduce your sentence for the third count to 3 months imprisonment.

### **GUILTY EARLY**

42. You have pleaded guilty early.
43. For that, your aggregate sentence in your first and second count is reduced to 22 months.
44. Your sentence for the third count is reduced to 2 months imprisonment.

### **SUMMARY**

45. Your sentence will be aimed at deterrence and to punish you adequately.
46. As I have explained earlier, no time spent in remand will be considered as time served and no further reduction to your sentence will be made for this.
47. You will receive an aggregate sentence for the first and second counts.
48. Your aggregate sentence for the first [ burglary ] and second count [ theft ] is 22 months imprisonment.

49. I am inclined to suspend this but only in part.
50. You will serve 12 months imprisonment and the remaining 10 months will be suspended for the next 3 years.
51. You are not to commit any other serious offence or offence punishable with imprisonment in the next 3 years or you risk this 10 months imprisonment held in waiting being activated.
52. For the third count [ breaching a bail condition ] you are sentenced to 2 months imprisonment.
53. I refuse to suspend this either in part or in whole.
54. I have considered the one transaction rule and the totality principle and the general rule encapsulated in section 22 ( 1 ) ( e ) and ( 6 ) of the Sentencing and Penalties Act 2009.
55. I order that you serve your 2 months imprisonment term for the third count, consecutively to your aggregate sentence for the first and second counts.
56. 28 days to appeal.



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

Dated at TAVUA this 2<sup>nd</sup> day of June, 2020