

IN THE MAGISTRATES' COURT OF FIJI

AT SUVA

Criminal Case No: - 725/2025

STATE

V

AVINESH KUMAR

For the Prosecution : Cpl Qiolevu

The accused: In person

Date of Sentence: 28th of May 2025

SENTENCE

1. AVINESH KUMAR, you were charged with one count of Damaging Property, contrary to section 369(1) of the Crimes Act¹, and two counts of Theft, contrary to section 291(1) of the Crimes Act.
2. You pleaded guilty this morning and admitted to the summary of facts presented by the Prosecution.
3. According to the admitted summary of facts, on 28/04/2025, at around 9:00 p.m., the complainant parked his car at the USP tennis court car park to play football with his friends. They left their wallets and other belongings in the vehicle, and within five minutes, when they returned, they found the front passenger side quarter glass broken and the wallets and other items stolen. The complainant lost items valued at \$255.00, while the value of the stolen property belonging to his friend was \$115.00. Additionally, the cost of the damage caused to the broken glass is \$120.00.
4. I am satisfied that your plea and the admitted summary of facts are consistent with the charges. Accordingly, I convict you of these charges.
5. Maximum sentence for Damaging Property is 02 years imprisonment and in Singh v State ²the court held that the tariff is from 6 to 18 months.
6. The prescribed penalty for Theft is 10 years imprisonment.
7. The tariff was outlined in the case of Ratusili v State ³where his Lordship Justice Madigan said :
 - (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.

¹ No 44 of 2009.

² [2014] FJHC 191; HAA024.2013S (21 March 2014).

³ [2012] FJHC 1249; HAA011.2012 (1 August 2012).

- (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.

8. You have previous convictions for theft, and therefore your penalty must be at least 9 months' imprisonment.
9. Section 17 of the Sentencing and Penalties Act⁴ provides:

“If an offender is convicted of more than one offence founded on the same facts, or which form a series of offences of the same or a similar character, the court may impose an aggregate sentence of imprisonment in respect of those offences that does not exceed the total effective period of imprisonment that could be imposed if the court had imposed a separate term of imprisonment for each of them.”

10. The offences for which you were convicted were committed as part of the same transaction. Therefore, I will impose an aggregate sentence of imprisonment for the three counts, pursuant to Section 17 of the Sentencing and Penalties Act.
11. Considering the objective seriousness of the offences, I select 12 months as the starting point for your aggregate sentence.
12. The aggravating factor is that the offences were committed in a public car park. For that reason, I add 6 months, bringing the total to 18 months' imprisonment.
13. In mitigation, you submitted that you are a taxi driver, married, and have two small children. Additionally, the stolen properties were recovered. For these mitigating factors, I deduct 4 months, reducing the sentence to 14 months' imprisonment.
14. For your early guilty plea and the 27 days spent in remand, I deduct a further 5 months, resulting in a final sentence of 9 months' imprisonment.

⁴ No 42 of 2009.

15. I now consider whether to suspend your sentence pursuant to Section 26(2)(b) of the Sentencing and Penalties Act.
16. In mitigation, you stated that you committed these offences because you were unemployed at the time. However, this is not a valid excuse for committing crimes, depriving others of their hard-earned money, and damaging their property.
17. You also admitted to having 15 previous convictions dating back to 2014, with nearly 8 of them related to property offences. On 1 February 2023, you were convicted and sentenced to 22 months' imprisonment for a theft offence by the Nasinu Court, which was suspended for 3 years. This means you committed the present offences while under a suspended sentence for a similar offence. You are fortunate that the prosecution did not charge you with breaching the suspended sentence, which could have resulted in serving the 22-month imprisonment.
18. This court needs to emphasize that the public needs to feel safe leaving their property in their vehicles while attending to their daily activities. Offenders who break into vehicles and steal must be dealt with firmly to deter others and protect the community.
19. AVINESH KUMAR, accordingly, I sentence you to 9 months' imprisonment for this charge.
20. 28 days to appeal

