

IN THE MAGISTRATES' COURT OF FIJI AT
SUVA

Criminal Case No: 816/2025
EJ No: 37/2025

STATE
V
SEREVI NAITOKATOKA NILUTUWAI & Another

For the Prosecution: Mr.S.Seruvatu(ODPP)

For the accused: Ms.Gonewai(LAC)

Date of Sentence: 08th August 2025

SENTENCE

1. SEREVI NAITOKATOKA NILUTUWAI, you pleaded guilty to one count of Aggravated Robbery contrary to Section 311(1) (a) of the Crimes Act.¹
2. According to the admitted summary of facts, on 19 May 2025, at approximately 1:30 a.m., the complainant arrived at Jittu Estate to drop off his uncle in his motor vehicle (registration number MK 596). You, along with another individual, approached the complainant, and while the other person punched him, you stole one pair of Ray-Ban sunglasses (valued at \$380.00) and one packet of Pall Mall cigarettes (valued at \$10.00), the property of the complainant. The complainant reported the matter to the police and was medically examined. Subsequently, you were arrested and admitted to the offence.
3. I am satisfied that your plea of guilty is entered voluntarily and unequivocally. Accordingly, I convict you for this charge.
4. Pursuant to Section 311 of the Crimes Act the statutory maximum penalty for the offence of Aggravated Robbery is imprisonment for a term not exceeding 20 years.
5. In State v Tawake², the Supreme Court of Fiji suggested the following starting points based on the harm caused to the victim for Aggravated Robbery (offender either with another or with a weapon):

HIGH

Starting point: 7 years imprisonment

Sentencing range: 5-9 years

¹ No. 44 of 2009.

² [2022] FJSC 22; CAV0025.2019 (28 April 2022).

MEDIUM**Starting point: 5 years imprisonment****Sentencing range: 3-7 years imprisonment****LOW****Starting point: 03 years imprisonment****Sentencing range: 1-5 years imprisonment**

5. The first issue for determination by the Court is the appropriate sentencing range and corresponding starting point for the offence committed by you in this case considering the harm caused to the victim.

6. His Lordship Justice Brian Keith who introduced this new tariff in State v Tawake observed that:

“When it comes to the level of harm suffered by the victim, there should be three different levels. The harm should be characterized as high in those cases where serious physical or psychological harm (or both) has been suffered by the victim. The harm should be characterized as low in those cases where no or only minimal physical or psychological harm was suffered by the victim. The harm should be characterized as medium in those cases in which, in the judge’s opinion, the harm falls between high and low.”

7. I agree with the submission by the Prosecution that considering the harm suffered by the complainant as per the medical report this falls in low category.

8. Accordingly, I determine that a starting point of three (3) years’ imprisonment is appropriate for the offence in question with a sentence range of 01-05 years.

9. The Supreme Court in State v Tawake also identified following aggravating and mitigating factors relevant to the assessment of sentences for robbery offences.

The aggravating factors

- i. Significant planning**
- ii. Prolonged nature of the robbery**
- iii. Offence committed in darkness**
- iv. Particularly high value of the goods or sums targeted**
- v. Victim is chosen because of their vulnerability (for example, age, infirmity or disability), or the victim is perceived to be vulnerable**
- vi. Offender taking a leading role in the offence where it is committed with others**
- vii. Deadly nature of the weapon used where the offender has a weapon**

- viii. **Restraint, detention or additional degradation of the victim, which is greater than is necessary to succeed in the robbery**
- ix. **Any steps taken by the offender to prevent the victim from reporting the robbery or assisting in any prosecution**

The mitigating factors

- I. No or only minimal force was used**
- II. The offence was committed on the spur of the moment with little or no planning**
- III. The offender committed or participated in the offence reluctantly as a result of coercion or intimidation (not amounting to duress) or as a result of peer pressure**
- IV. No relevant previous convictions**
- V. Genuine remorse evidenced, for example, by voluntary reparation to the victim**
- VI. Youth or lack of maturity which affects the offender's culpability**
- VII. Any other relevant personal considerations (for example, the offender is the sole or primary carer of dependent relatives, or has a learning disability or a mental disorder which reduces their culpability)**

10. The Prosecution asked the court to take in to consideration the following as aggravating factors:

- a. Significant financial loss of property.**
- b. The offence was committed in the dark.**
- c. Attempt to evade law enforcement.**
- d. Premeditation and organized criminal activity.**

11. Upon consideration of the relevant factors, I find that the value of the property is not substantial, and the facts, along with the caution interview, do not indicate significant planning. However, I acknowledge that the offence was committed during the hours of darkness, at approximately 1:30 a.m.

12. In view of the sole aggravating factor identified, I enhance the sentence by two years to reach five years imprisonment.

13. With respect to mitigation, your counsel submitted the following :

- a. You are 22 years old;
- b. Remorseful;
- c. It was act of opportunity.

14. You have previous convictions for similar offences, and accordingly, I do not consider you eligible for any discount on the basis of good character.

15. Taking into account the limited mitigating factors, I reduce the sentence by one year, resulting in a sentence of four years' imprisonment.

16. You have entered an early guilty plea. This has saved the time and resources of both the Court and the Prosecution. In recognition of your early plea, and giving full credit, I apply a one-third reduction to the sentence, resulting in a term of thirty-two (32) months' imprisonment.

17. You have been held on remand for this matter since 22 June 2025. Accordingly, I deduct a further two (2) months from your sentence to reflect time already served, resulting in a final sentence of thirty (30) months' imprisonment.

18. In their sentencing submission, the State has drawn the Court's attention to the Court of Appeal decision in *Chand v State*,³ where the Court approved the principles of punishment as laid down by the New Zealand Court of Appeal in *R v Radich*,⁴ in the following manner:"

"... one of the main purposes of punishment ... protect public from the commission of such crimes by making it clear to the offender and to other persons with similar impulses that, if they yield to them, they will meet with severe punishment."

"If a Court is weakly merciful, and does not impose a sentence commensurate with the seriousness of the crime, it fails in its duty to see that the sentences are such as to operate as a powerful factor to prevent the commission of such offences."

"The Court of Appeal , in considering an application for reduction of sentence, must be reasonably satisfied that the sentence is manifestly excessive or wrong in principle, or there must be exceptional circumstances calling for its revision".

19. **Serevi Naitokatoka Nilutuwai**, although you may be classified as a young offender, you are not a stranger to the court. You have previously been sentenced for similar offences, yet you continue to engage in criminal behavior. Your pattern of offending demonstrates a disregard for the law and a failure to take previous court interventions seriously.

20. It is not a valid excuse that the offence occurred shortly after midnight, nor that the items taken were of limited value. You are equally liable for the actions of your associate, whose assault on the complainant elevated this matter to a robbery. Public in Fiji are entitled to move freely and safely at any time of the day or night without fear of being physical harm and robbed of their properties. It is the responsibility of the court to uphold and protect this fundamental freedom, and this is done, in part, through the imposition of deterrent sentences.

21. Accordingly, I sentence you to 30 months imprisonment for this charge with a non-parole period of 20 months.

22. The parties may appeal this sentence to the High Court within 28 days.



³ [2016] FJCA 65; AAU0063.2012 (27 May 2016).

⁴ [1954] NZLR 86.