

\$13.90 each all to the total value of \$167.90, the property of Kristen Prasad with intention to permanently deprive the said Kirtesh Prasad.

Count Two
Statement of Offence

BREACH OF SUSPENDED SENTENCE: Contrary to Section 28 (1) of the Sentencing and Penalties Act 2009.

Particulars of Offence

ALVIN ASHRIT PRASAD on the 22nd day of February, 2022 at Labasa in the Northern Division, breached the suspended sentence of 3 months imprisonment suspended for 2 years vide Labasa Magistrate Court Case File No 272/20 dated 6th May, 2020 by committing another offence namely THEFT.

Count Three
Statement of Offence

BREACH OF SUSPENDED SENTENCE: Contrary to Section 28 (1) of the Sentencing and Penalties Act 2009.

Particulars of Offence

ALVIN ASHRIT PRASAD on the 22nd day of February, 2022 at Labasa in the Northern Division, breached the suspended sentence of 9 months imprisonment suspended for 3 years vide Labasa Magistrate Court Case File No 388/20 dated 24th June, 2020 by committing another offence namely THEFT.

2. He said, he understood the charges and pleaded guilty to all the counts. He said, when questioned by the court that, he pleaded guilty voluntarily. The prosecution then read the summary of facts in court.
3. Briefly the facts were as follows. The accused was 33 years old, a farmer of Bulileka, Labasa. The complainant was Mr. K. Prasad, 34 years old and Manager at the Grand Eastern Hotel,

Labasa. On 22 February 2022, the accused was at the Grand Eastern Hotel bar, between 4.15pm and 4.50pm. While the bar staff were engaged in other matters, the accused stole 2 bottles of long neck Fiji gold beer and one bottle of Fiji Honey Rum. The beer was worth \$13.80, while the rum was worth \$154. The theft was reported to police. He was later arrested and caution interviewed by police. He admitted the above theft. It was later discovered that the accused had breached two suspended prison sentences, as alleged in count 2 and 3.

4. The accused admitted the above summary of facts. The court treated the accused as a first offender, when in fact he had two previous convictions as shown in count no. 2 and 3. The accused then submitted his plea in mitigation. He said, he was the sole bread winner in his family, a farmer and earns about \$150, probably per week. Sentence was delivered on 15 March 2022. The learned Magistrate took 8 pages to make his sentencing remarks. The accused was then formally found guilty as charged and convicted accordingly. On count no. 1, the accused was sentenced to 9 months and 1 week imprisonment. On count no. 2, he was sentenced to 3 months imprisonment. On count no. 3, he was sentenced to 9 months imprisonment. The sentences in count no. 2 and 3 were made concurrent to each other (9 months imprisonment), but the total 9 months imprisonment was made consecutive to the 9 months 1 week imprisonment sentence in count no. 1, making a final total sentence of 18 months 1 week imprisonment.
5. The appellant was not happy with the above. In his purported Petition of Appeal, he did not indicate whether or not he was appealing against conviction and/or sentence. However, during the hearing, it was apparent he was appealing his sentence only. He was asking for a fine as a sentence, or alternatively, the sentence in count no. 1 should had been made concurrent to the 9 months concurrent prison sentence for count no. 2 and 3. In other words, he was asking for a 9 months prison sentence for all three counts, if a fine was not accepted, as a sentence.
6. Before I consider the above, it must be noted that the accused purported appeal petition was received by the High Court on 5 May 2022. The sentence was passed on 15 March 2022, and the 28 days appeal period expired after 12 April 2022. So, the appellant's purported petition of appeal was 23 days out of time. As a matter of law, he had no right of appeal, unless the High Court grants him an extension of time to appeal. This was normally done if he showed the High Court, he had merits in his appeal. To answer the above question, I had carefully perused the

court record and read the learned Magistrate's sentencing remarks. I had also carefully listened to the appellant and the prosecution's verbal submissions during the appeal hearing.

7. I find that the learned Magistrate had applied the right authorities and had carefully considered the facts of the case. In my view, he had not erred in convicting the appellant as charged and passing the 18 months 1 week sentence on the three counts. In my view, he was very lenient on the appellant. Previously, the appellant had two suspended sentences, first on 6 May 2020, (date of offence) and second on 24 June 2021 (date of offence). He should have been sent to prison after the 24/6/21 incident than being given a second suspended prison sentence. The 18 months 1 week imprisonment in this case was appropriate. If I allow the appellant to proceed with his appeal, I am tempted to increase his prison sentence to 2 years 6 months. He needs to be taught a lesson to respect other peoples' property rights.

8. Given the above, I find the appellant had no merit in his intended appeal. Leave to appeal out of time is denied. As a result, the appellant has no right to appeal, as the 28 days appeal period has long expired by 23 days. I rule accordingly.




Salesi Temo
JUDGE

Solicitor for Appellant : **Appellant in Person**
Solicitor for Respondent : **Office of Director of Public Prosecution, Labasa**