

IN THE RESIDENT MAGISTRATES COURT
AT SUVA
CRIMINAL JURISDICTION

Juvenile Case No. 39 of 2016

The State

V

M Q T

For the State : WPC Eka
For the Juvenile : Counsel Ms. Nabainivalu
Date of Punishment : 10th August 2017

PUNISHMENT

Introduction

1. You have been charged with one count of **Theft** contrary to Section 291(1) of the Crimes Decree Number 44 of 2009.
2. You have pleaded guilty to the charge on 19/04/2017, on your own free will, with a representation by a Counsel from Legal Aid.
3. The prosecution has filed the Summary of Facts on 05/05/2017, which was duly admitted by you. It revealed that on 13th September 2016, at about 6.15pm you have

stolen a hand bag of Alanieta Cereliku (the complainant) who was sitting inside a bus at the Nabua bus stand. The window of the bus beside her was bit low and you and another boy have walked up to the window and all of a sudden you have jumped up and grabbed her hand bag and ran off.

4. The handbag valued at \$69.00 contained of one Blackberry mobile phone valued at \$400.00, one black Alcatel mobile phone valued at \$45.00, one purple pencil case containing one roll on valued at \$10.00, one office key, one black Hard Drive valued at \$195.00, one Red purse valued at \$29.95 and cash of \$24.00, totaling the value at \$772.95.
5. Later, you have been arrested and interviewed under caution in the presence of your sister, whereby you have admitted committing the alleged offence. Stolen items had not been recovered as you have thrown the handbag to a rubbish dump, after selling the mobile phone to a passerby.
6. Being satisfied with your unequivocal plea of guilt, and the admitted summary of facts, which satisfy the elements of the offence, I find you guilty to the offence of Theft, as set out in the charge.

Tariff

7. The maximum penalty for Theft is 10 years imprisonment and the tariff for this offence was discussed by Justice Madigan in *Ratusili v State* [2012] FJHC 1249; HAA011.2012 (1 August 2012) where the following principles were established:
 - a. *For a first offence of simple theft the sentencing range should be between 2 and 9 months;*
 - b. *Any subsequent offence should attract a penalty of at least 9 months;*
 - c. *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;*

- d. *Regard should be had to the nature of the relationship between offender and victim;*
 - e. *Planned thefts will attract greater sentences than opportunistic thefts.*
8. In addition to the aforementioned tariff, this court has a limitation in deciding an appropriate punishment for you, in terms of section 30(3) of the Juvenile Act, which says, *a young person shall not be ordered to be imprisoned for more than 2 years for **any** offence.*

Aggravating Factors

9. You have snatched a hand bag from a person who was sitting inside a bus. When a person is sitting inside a bus, the least he/she would expect is that somebody would jump up from the window and snatch your bag. In contrary, when people walking on the road, at about 6.15pm, they naturally tend to be careful about their belongings. But this is completely an unexpected situation and as the summary of facts mentioned correctly that the complainant had been in a shock as to what has happened.
10. This court is in the opinion that the way you have snatched the bag, has to be considered as an aggravating factor.

Mitigating factors

11. You were 15 years old at the time of the offence.
12. You don't have previous convictions.
13. You are remorseful and seek leniency of court.
14. You are willing to go back to school and complete your studies.

Early Guilty Plea

15. You have been produced before the court for the first time on 31/10/2016 and from 1/12/2016 to 13/02/2017 (2 ½ months) you were absconding court. Thereafter you have pleaded guilty on 19/04/2017, which was the first available opportunity for you to plead.

16. In Vilimone v State [2008] FJHC 12; HAA 131-132.2007 (8 February 2008) Justice Mataitoga has commented that a discount from the sentence for a guilty plea should be considered separately from other mitigating factors. Further he has said that *"Because the Appellant has pleaded guilty at the first available opportunity, his sentence should be reduced approximately by a third..."*

17. In Rokini v State [2013] FJHC 680; HAA16-19.2013 (12 December 2013), Justice Gounder quoted from the Court of Appeal Judgment Daunabuna v. The State (2009) FJCA 23; AAU0120.2007 (4 December 2009) *"the Court of Appeal highlighted the considerations that went to the weight of a guilty plea at [16]..."* *"The weight to be given to a guilty plea depends on a number of factors. Some of these factors were identified by Hunt CJ at CL in R v. Winchester (1992) 58 A Crim R 345 at 350:"* According to these decisions, contrition or some other quality of attribute shown in guilty plea, should be considered independently from the mere fact that the person has pleaded guilty.

18. Even though you were delayed in few months to take the plea since you were absconding court, you have pleaded guilty without proceeding to a hearing, saving the time of court and the expenses of a full hearing. According to your mitigating submissions, you are remorseful. Therefore, your guilty plea should attract a certain concession on your punishment.

Analysis

19. Purposes of imposing sentence by court are mentioned in section 4 of the Sentencing and Penalties Decree 2009. They are;

- (a) To punish offenders to an extent and in a manner which is just in all circumstances;
- (b) To protect the community from offenders;
- (c) To deter offenders or other persons from committing offences of the same or similar nature;
- (d) To establish conditions so that rehabilitation of offenders may be promoted and facilitated;
- (e) To signify that the court and the community denounce the commission of such offences; or
- (f) Any combination of these purposes.

20. Theft is a serious offence which is denounced by the society. These types of offenders must deter from committing further offences in this nature and the community should be protected from this kind of offenders.

Punishment

21. I select a 4 month interim imprisonment term as the starting point and add one (1) month for aggravating factors, deduct one (1) month for the guilty plea and another one (1) month for other mitigating factors, making the final punishment as three (3) months imprisonment term. You have spent 2 weeks in remand for this case and therefore, I deduct fourteen (14) days from your punishment. Your final imprisonment term is 2 months and 14 days.

22. Now I will consider whether I should suspend your sentence.

23. Your mitigating submissions say that you are not a threat to the society and you do not have a propensity for offending. It further says that you are in a positing to rehabilitate yourself.
24. Your Social Background Report says, though your behaviour at the Juvenile Centre is not up to the standard, you are trying to overcome your weaknesses and to improve yourself.
25. Rehabilitating offenders is one of the purposes of punishment. In view of your young age and the previous good character, rehabilitation aspect of this case is very much highlighted than the deterrence.
26. Justice Shameem in Nariva v The State [2006] FJHC 6; HAA0148].2005S (9 February 2006); stated as follows;
“The courts must always make every effort to keep young first offenders out of prison. Prisons do not always rehabilitate the young offender. Non-custodial measures should be carefully explored first to assess whether the offender would acquire accountability and a sense of responsibility from such measures in preference to imprisonment.”
27. In Suren Singh v The State [2000] FJHC 264; 2FLR127, again Justice Shameem observed that;
“However as a general rule, leniency is shown to first offenders, young offenders, and offenders who plead guilty and express remorse. I believe that in this case, every effort should have been made to keep four of the Appellants out of Prison.”
28. On a careful consideration of the law and facts aforementioned, I am in the opinion of that a custodial sentence is not warranted in this case. As I have concluded your final punishment as three (3) months imprisonment term, your punishment is eligible to be suspended, in terms of section 26(2)(b) of the Sentencing an Penalties Decree 2009. Therefore I suspend your punishment for a period of 2 years.

29. The nature of your sentence is explained to you in Court. If you re-offend during the suspension of your punishment, this punishment may be activated under section 28 of the Sentencing and Penalties Decree 2009.

30. 28 days to Appeal.

Summary of the punishment- **Two (2) months and 14 days imprisonment term,
Suspended for 2 years.**



Geethani Wijesinghe
Resident Magistrate

At Suva

~~19th~~ May 2017

10th Aug