

**IN THE MAGISTRATES' COURT OF FIJI
AT SUVA
CRIMINAL JURISDICTION**

Criminal Case No. 1582 of 2019

STATE

v.

VILIAME ROKODINADINA

For the State: Constable P. Prasad

For the Accused: In Person

SENTENCE

1. You are charged with one count of **ROBBERY** contrary to section 310 (1)(b)(i) of the **CRIMES ACT 2009** in that you on the "22nd" day of October 2019 at Nasinu in the Central Division robbed one **LAGESH NARAYAN** and stole 1 x. iPhone 7+ valued at \$800.00, 1 x Ripcurl Brand Wallet valued at \$69.00 containing \$15.00 cash whereby to the total value of \$884.00 the property of **LAGESH NARAYAN** and after committing theft, used force to the said person with intent to escape from the scene."
2. On 31 December 2019, you informed me that you intended to represent yourself. You indicated you were ready to take plea. You entered a plea of guilty after indicating that you understood the Charge. When I asked you if anyone had forced you into pleading guilty you responded in the negative. When I asked you if anyone had promised you anything in exchange for your guilty plea you said no.
3. Your facts were read out and interpreted to you in open Court and you indicated that you understood and admitted these facts. The Facts show that on 22 October 2018 between 4.00pm – 5.10pm you approached **LAGESH NARAYAN** who sensed that you wished to rob him. He threw his mobile phone and wallet into a nearby compound at which point you pushed him and then ran toward the phone and wallet and stole it (read para. 1 and para. 2 together).
4. **LAGESH NARAYAN** ran after you and you dislocated his shoulder when you pushed him to the ground. You were apprehended by **SPECIAL CONSTABLE 5128 KAMELI** shortly afterward and the *i-Phone* was found in your possession. The Police

ultimately recovered the wallet too I was told by the Prosecutor in open Court. You said that the \$16.00 was found along with the wallet. I accept this as true. It makes sense on the facts available to me.

5. I am satisfied that your plea was unequivocal. I find you guilty and I convict you of **ROBBERY** as charged.

MAXIMUM SENTENCE & TARIFF

6. The maximum penalty for this offence is imprisonment for 15 years.
7. A tariff for this offence was recommended by the High Court in **Rarawa v. State** [2015] FJHC 324; HAA05.2015 (30 April 2015) per Madigan J. as follows:
 - (i) Robbery (but with concomitant violence): 8 – 14 years
 - (ii) Robbery (without violence): 2 – 7 years.
8. In **Raisokula v. State** [2018] FJHC 148; HAA24.2017 (2 March 2018), Perera J. offered this caution in respect of **Rarawa**:

“67. .. there is no clear guidance that specifies the degree and the nature of force that would constitute “violence” in a case of robbery for the purpose of deciding whether a particular offending would come under the aforementioned tariff in question.

68. The sentencing courts before selecting the said tariff should be cautious to first satisfy that the offending involved violence based on the evidence in the case that would justify applying that tariff where the starting point of the sentence should be at least 8 years.”

AGGRAVATING FACTOR

9. You injured your victim. As a result of your actions, **NARAYAN** suffered a dislocated shoulder on top of the trauma of being assaulted and robbed.

MITIGATING FACTORS

10. You are 20 years old. You are single. You work for a construction company and you currently earn \$150.00 a week. You seek forgiveness. You indicate that you have learnt your lesson after spending time in remand and you promise you will not reoffend. You look after your 78 year old grandmother. You have been in remand for the last two months and 7 days and you were not sure what has happened to her. I noted that you appeared worried when you communicated that fact to me. You promise you will not reoffend. You are a first offender who has entered a guilty plea at the first opportunity available to you. The items taken were recovered almost immediately after the robbery.

SENTENCING

11. Sentencing in Fiji requires me to pick a starting point from the middle to bottom end of established sentencing tariffs. By that rule, the tariff that applies is imprisonment for 8 – 14 years.

12. I decline to apply that tariff here. Sentencing is not a mathematical exercise. I accept it must be principled and in instances where a new tariff has been identified after careful consideration of sentences for the same offence over a period of time handed down by error-free courts, or because we have too rigidly confined ourselves to the numbers we have picked over a period of time and appellate courts hold that old tariffs no longer meet the ends of justice, starting points ought to be selected from the bottom to middle range therein.
13. However, I am uncomfortable following a range that has been selected by one person alone. I agree with Perera J. that it is best to first look at the degree of violence used before one considers relying on the sentencing range recommended in **Rarawa**.
14. The tariff for **Aggravated Robbery** is 8 – 16 years: *Wallace Wise v The State*, Criminal Appeal No. CAV 0004 of 2015; (24 April 2015). The top end for **Theft** is 3 years: **Ratusili v. State** [2012] FJHC 1249; HAA011.2012 (1 August 2012) at [13 (iii)]. These are useful authorities to look at because **Robbery**'s constituent parts involve a combination of **Theft** and **Assault** *whether common or resulting in actual harm; assault or battery*.
15. You pushed a man and took his mobile phone and wallet containing \$16.00 in cash. In attempting to get away from him you pushed him once again, this time to the ground and he dislocated his shoulder. I accept that the dislocated shoulder occurred more by accident than design. You do not show the hall-marks of the violent offender who goes out of his way to use brutal force in order to attain his illegal objective.
16. I pick a starting point of imprisonment for 3 years. In its own way, your actions in stealing from **NARAYAN** and then pushing him to the ground was equivalent in objective seriousness to a breach of trust or a planned theft involving a large amount of money.
17. I increase this sentence by 2 years for the injury that you caused to your victim thereby. Regardless of your intent, the consequence of your intended act was quite serious and you should be made to pay for it. Your sentence is now imprisonment for 5 years.
18. I decrease your sentence nominally by 1 month for your personal circumstances. Your sentence is now imprisonment for 4 years and 11 months. I decrease your sentence by 1 month for the fact that the property taken was recovered. This is a mitigating factor but it is not one that you can claim any real credit for. Your sentence is now imprisonment for 4 years and 10 months.
19. More than that, you are a young first offender. I reduce your sentence by 12 months for your previous good character. Your sentence is now imprisonment for 3 years and 10 months.
20. I further decrease your sentence by 16 months for your guilty plea. It was given very early and I am satisfied that it is an indication of genuine remorse on your part. Your sentence is now imprisonment for 2 years and 6 months.
21. You were remanded for a period of 2 months and 7 days. Pursuant to section 24 of the **Sentencing and Penalties Act 2009** I declare this period time already served. As such, your head sentence is imprisonment for 2 years 4 months and 23 days.

22. I am not empowered to suspend a sentence more than 2 years: *see* s. 26 (2) (b) of the **Sentencing and Penalties Act 2009**.
23. For your crime of **ROBBERY** contrary to section 310 (1) (b) (i) of the **CRIMES ACT 2009** you are sentenced to imprisonment for a period of 2 years 4 months and 23 days.
24. In light of your status as a young first offender who opted to enter a plea of guilty early and the social utility derived from that fact in terms of the saving of the Court's time and the resources the State would have had to expend in bringing the matter to trial coupled with the fact that your victim has been able to attain justice without the additional trauma of testifying in Court, I decline to impose a non-parole period¹.
25. This sentence is designed with the principles of both specific *and* general deterrence and your rehabilitation in mind. You may be young and of previous good character, but you waylaid a man on our public streets and you robbed him. That is no small matter.

RESULT

26. In the result, and for the reasons set out above, I convict you of **ROBBERY** and I sentence you to imprisonment for 2 years 4 months and 23 days.
27. **28 days to appeal to the High Court.**



Seini K Puamau
Resident Magistrate

Dated at Nasinu this 2nd day of January 2020.

¹ s.18 (2) of the **Sentencing and Penalties Act 2009**