

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

Criminal Case No: 274 - 2019

STATE

-v-

RATU DAKUITOGA ROKOLISOA

Before : RM Fotofili L.
For The Prosecution : Inspector Lenaitasi S. [Police Prosecution]
For The Defendants : In Person, Waived Right To Counsel
Date of Sentence : 25th February 2020

SENTENCE

1. **RATU DAKUITOGA ROKOLISOA**, you have pleaded guilty to the following charge :

Statement of Offence

THEFT: Contrary to section 291 (1) of the **Crimes Act 2009**.

Particulars of Offence

RATU DAKUITOGA between the 29th day of September, 2019 and 2nd day of October, 2019 at Kavuli Tavua in the Western Division, dishonestly appropriated (stole) a 40 HP Yamaha Enduro Outboard Engine valued at \$4,000, the property of **Sirtaj Ali**, with the intention of permanently depriving the said **Sirtaj Ali** of his property.

2. Your plea and admission in court and the evidence tendered, supports your guilty plea. I am also satisfied that you understand the consequence of your plea.
3. I find you guilty and convict you of the charge.
4. You were around the area, having come from Suva in a rental vehicle. You went to relieve yourself and you saw two boats nearby. You removed the engine from one of

the boat and you loaded the engine into your parked vehicle. You drove to Suva and sold the engine for \$1,300. The engine was recovered later by police.

5. The matter was reported and during the course of police investigations, you were arrested. When interviewed under caution by police, you admitted driving in your rental vehicle. You parked the vehicle near the jetty and you went into one of the boat. You lifted the engine from the boat, to your vehicle. You admitted taking the engine to Suva and selling it for \$1,400.
6. I have already ordered for the return of the item to the owner Sirtaj Ali pursuant to section 155 (1) (c) of the **Criminal Procedure Act 2009** . That order for the return of the item was done on the 7th of January 2020.
7. You are a first offender.
8. You are 24 years old. Your wife is about to give birth. She is 7 months pregnant. You are separated from your wife. You seek a non-custodial sentence. You say that your family is going through a difficult time. You have debts to pay. You say that you are not well educated and you were facing financial difficulty at the time. You promise not to re-offend and seek forgiveness. You apologise for what you have done. You are ready to accept your sentence.
9. You have been in remand ever since you were produced for the first time on the 2nd of December 2019. You were remanded primarily because he had another similar case pending, that is, Tavua CF 209 – 19. I had released you on bail in that case on the 13th of September 2019. You have pleaded guilty in that case and you have been sentenced in that case as well today.
10. You committed this case while you were out on bail in that other file.
11. I will not consider any time spent in remand as time served.

MAXIMUM SENTENCE

12. The maximum punishment for theft is up to 10 years imprisonment.

SENTENCING RANGE or SENTENCING TARIFF

13. The sentencing tariff for theft is as follows [**Ratusili v State** [2012] FJHC 1249; HAA011.2012 (1 August 2012)] :

(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.

(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.

STARTING POINT

14. Based on the objective seriousness of the offence, I select a starting point of 6 months imprisonment.

AGGRAVATING FEATURES

15. As I have explained in your other case too, the owner is vulnerable as it is difficult and costly to secure sea vessels, such as by having a boat house or hiring a watchmen or security. In this jurisdiction, it is common place for boat owners to leave their vessel and equipment beached or tied up in or near the sea or water. This leaves their property easily susceptible to trespass and plunder.
16. The value of the item stolen too is significant.
17. You sold the engine for \$1,400 and I accept this amount which you have articulated in your police interview.
18. I increase your sentence to 13 months imprisonment.

MITIGATION

19. I do not find your family circumstance compelling. You are the primary author of your current predicament and you cannot claim family circumstance as mitigation if you go out of your way to steal.
20. However, you have cooperated with police which I have no doubt, resulted in the item being recovered.
21. I accept that you are remorseful.
22. You are a first offender.
23. I reduce your sentence to 9 months imprisonment.

GUILTY PLEA

24. You have pleaded guilty early.
25. I reduce your sentence to 6 months imprisonment.

FINAL SENTENCE

26. Your sentence is aimed at deterrence and is to punish you adequately.
27. As I have explained, I will not consider any time spent in remand as time served and so no further reduction will be made to your sentence.
28. You are sentenced to 6 months imprisonment.
29. I refuse to suspend your sentence either in part or in whole.
30. I am aware of the sentences imposed on you on the 3rd of February 2020 by my brother Magistrate at the Ba court in CF 490 – 19 [theft of an outboard motor engine] and CF 491 – 19 [assault causing actual bodily harm]. The offences in both cases were committed in November 2019. Your imprisonment term in both cases were ordered to be served consecutively to each other which requires you to serve a total of 12 months and 24 days imprisonment.
31. I am aware of your sentence in Tavua CF 209 – 19 [theft of an outboard motor engine] which I passed on you earlier today where you were sentenced to 9 months imprisonment, to be served consecutive to the sentence in your Ba cases.

32. With the sentence in your Ba cases and the sentence passed on you earlier today at Tavua, you are required to serve a total of 21 months and 24 days imprisonment.
33. I am mindful of the totality principle and the one transaction rule.
34. I order that you serve your 6 months imprisonment term, concurrently to your sentences imposed at Ba and concurrently to your sentence imposed earlier today on you in Tavua CF 209 – 19.
35. 28 days to appeal to the High Court if there is any dissatisfaction with the sentence.



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Lisiate T.V. Fotofili

Resident Magistrate

Dated at TAVUA this 25th day of February, 2020