

IN THE MAGISTRATES' COURT OF FIJI
AT TAVUA
CRIMINAL JURISDICTION

Criminal Case No: 44 - 2020

STATE

-v-

LUKE TUI

Before : RM Fotofili L.
For The Prosecution : WPC Chand A. [Police Prosecution]
For The Defendant : In Person, Waived Right To Counsel
Date of Sentence : 17th March 2020

SENTENCE

1. **LUKE TUI**, you have pleaded guilty to the following charge :

Count 1

Statement of Offence

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

Particulars of Offence

LUKE TUI on the 24th day of December, 2019 at Tavua Town in the Western Division dishonestly appropriated \$50 the property of **WILLIAM FER**, with the intention of permanently depriving the said **WILLIAM FER**.

Count 2

Statement of Offence

BREACH OF BAIL CONDITION: Contrary to section 25 (1) (c) and 26 (1) of the Bail Act No. 26 of 2000 and Bail Amendment Decree No. 28 of 2012.

Particulars of Offence

LUKE TUI on the 24th day of December, 2019 at Tavua in the Western Division breached the condition of bail by reoffending whilst on bail, a condition imposed by Tavua Magistrate Court vide case File Number 72/16.

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 have also taken judicial notice of the records in your other pending file CF 72 – 16. You are charged with using indecent language in public in that case. You have denied the allegation and that case is awaiting trial. You were granted bail with conditions in that case on the 3rd of May 2016 and one of your conditions of bail was not to re-offend while the case was pending. You breached that condition when you committed theft which is the subject of count 1.
4. I find you guilty and convict you of both counts in the charge.
5. The victim is 16 years old. He was in the area attending a family reunion. You told him that you knew a place where you could get good BBQ at 2 am in the morning. The victim gave you \$50 and you went to the village. The victim waited for you for about 5 minutes but you did not return. A search was made for you but it was unsuccessful. The matter was then reported to police. While the victim was at the police station, you came by in a carrier and told the victim that you are going to 'pick it up'. You then went to the village and never returned or gave the money to the victim. You were arrested from your house on the 3rd of February, 2020 which is about 2 months later.
6. After your arrest, you were then interviewed under caution by police. You admitted receiving the \$50 from the victim to buy BBQ. You were drinking liquor at the time. You used the money for transport fare, buying cigarette and you kept the rest of the money. You said that you had forgotten about the money given by the victim.
7. I do not accept every answer or admission made in your police statement. I am satisfied that you knew that you had the money in your possession and you used or kept it.
8. There has been no repayment or recovery of this \$50.
9. You are not a first offender. You have 2 convictions for being drunk and disorderly in 2019, a conviction for breaching a bail condition in 2018 and a conviction for absconding bail in 2017.

Count 1: Theft – reduced to 3 months imprisonment

Count 2: Breach of Bail – reduce to 20 days imprisonment

GUILTY PLEA

24. You have pleaded guilty early.

Count 1: Theft – reduced to 2 months imprisonment

Count 2: Breach of Bail – reduced to 13 days imprisonment

FINAL SENTENCE

25. Your sentence is aimed at deterrence and is to punish you adequately.

26. 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.

Count 1 THEFT

27. Count 1: Theft – you are sentenced to 2 months imprisonment.

28. This will be suspended in part.

29. You will serve 1 month imprisonment and the remaining 1 month will be suspended for the next 2 years.

30. Do not commit any other serious offence or any offence punishable with imprisonment in the next 2 years or your remaining 1 month imprisonment may be activated.

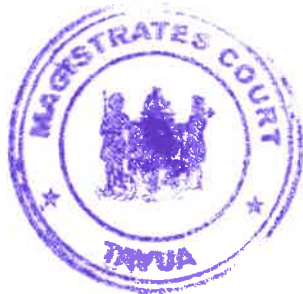
31. There is no need for the imposition of a domestic violence restraining order [DVRO] in this case as there is no domestic relationship between the parties.

Count 2 – Breach of a Bail Condition

32. Count 2: Breach of Bail – you are sentenced to 13 days imprisonment.
33. I refuse to suspend this term either in part or in whole.

CONSECUTIVE SENTENCE

34. I am mindful of the totality principle and the one transaction rule.
35. I order that you serve your sentence in both counts, consecutively to each other.
36. This means that you are to serve a total of 1 month and 13 days imprisonment.
37. Remember that another 1 month imprisonment is held in suspense [for the next 2 years] for count 1.
38. You are to serve 1 month and 13 days imprisonment immediately.
39. 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 17th day of March, 2020