

IN THE HIGH COURT OF FIJI
AT LAUTOKA
APPELLATE JURISDICTION

CRIMINAL APPEAL CASE NO.: HAA 35 OF 2014

BETWEEN: **WISE EZEKIAL LAGILEVU**

Appellant

AND: **STATE**

Respondent

Counsels: **Appellant in person**
 Mr. Josaia Niudamu for the Respondent

Date of Hearing: **27 October 2014**

Date of Judgment: **28 October 2014**

JUDGMENT

1. The appellant was charged before the Nadi Magistrate Court with one count of Theft contrary to Section 291(1) of the Crimes Decree No. 44 of 2009. The particulars of the offence are as follows:

Statement of Offence [a]

THEFT: Contrary to Section 291 (1) of the Crimes Decree No. 44 of 2009.

Particulars of Offence [b]

WISE EZEKIEL LAGILEVU, on the 23rd day of May, 2014 at Nadi in the Western Division dishonestly appropriated an ASUS Laptop valued \$1,600.00, Alcatel mobile phone valued \$180.00, reading glass valued \$220.00, shoes valued \$10.00 and an exercise book valued \$1.50 all to the total value of \$2,021.50 the property of **SEWANJANI KUMARI**.

2. He had pleaded guilty for the count and admitted the summary of facts.

3. The summary of facts are as follows:

On 23rd day of May, 2014 at about 12pm Kennedy Avenue, Nadi one Wise Ezekiel Lagilevu [B-1] 24 years, Student of Solovi, Nadi stole an ASUS Laptop valued \$1,600.00, red and black Alcatel mobile phone valued \$180.00, shoes valued \$10.00, wallet valued \$10.00 and an exercise book valued \$1.50 the property of Sewanjani Kumari 19 years [A-1] of Nasau, Nadi.

[A-1] is a student at Fiji National University at Namaka and she is not related to [B-1] in any way.

On the above mentioned date and time [A-1] and [B-1] was at Kennedy Avenue after [B-1] lied to [A-1] that his sister lives in a house at Kennedy and for [B-1] to go and get his laptop from there. [A-1] left her bag containing the above mentioned items with [B-1] and went to the house that [B-1] says that her sister is staying. [A-1] came back after she noticed that there is no laptop at the said house. Upon returning [A-1] could not find [B-1] at the place where he was standing. [A-1] looked around the area for [B-1] but could not find him.

The matter was reported and [B-1] was arrested at his house at Solovi together with the stolen items. He was interviewed under caution and he admitted stealing the above said items ref to Q. and A. 42 to 56. He was subsequently charge for one count of Theft.

4. Appellant was convicted and sentenced to 18 months imprisonment on 4.8.2014.
5. This appeal was filed on 21.8.2014 within time.
6. The grounds of appeal are:
 - (i) That the sentence is harsh and excessive and wrong in principle in all the circumstances of the case
 - (ii) That the sentencing Magistrate erred in selecting a starting point outside the tariff guiding for starting points
 - (iii) That the aggravating feature was already taken into consideration when the starting point was determined.
7. Both parties have filed written submissions.
8. The learned Magistrate had considered relevant guide line Judgments and selected a starting point of 24 months. He had followed the correct Guideline judgments.

"The tariff for simple larceny on first conviction is 2-9 months (Ronald Vikash Singh v. State HAA 035 of 2002) and on second conviction a sentence in excess of 9 months. In cases of the larceny of large amounts of money sentences of 1 ½ years imprisonment

(Isoa Codrokadroka v. State Crim. App. HAA 67 of 2002) and 3 years imprisonment have been upheld by the High Court (Sevanaia Via Koroi v. State Crim. App. HAA 031 of 2001S). Much depends on the value of the money stolen, and the nature of the relationship between victim and the defendant. The method of stealing is also relevant."

In **Ratusili v State** [2012] FJHC 1249; HAA 011.2012 (1 August 2012) Hon. Mr. Justice Paul Madigan summarized the tariff judgments for theft.

'From the cases then the following sentencing principles are established:

- (i) For an 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 up to three years*
- (iv) Regard should be had to nature of the relationship between offender and the victim*
- (v) Planned thefts will attract greater sentences than opportunistic thefts*

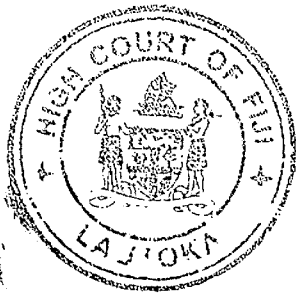
9. Then the learned Magistrate had followed **Koroivuki v State** [2013] FJCA 15; AAU 0018.2010 (5th March 2013) in selecting the starting point.

"In selecting a starting point, the court must have regard to an objective seriousness of the offence. No reference should be made to the mitigating and aggravating factors at this stage. As a matter of good practice, the starting point should be picked from the lower or middle range of the tariff. After adjusting for the mitigating and aggravating factors, the final term should fall within the tariff. If the final term falls outside either below or higher than the tariff, then the sentencing Court should provide reasons why the sentence is outside the range."

10. The starting point selected by the learned Magistrate is 24 months. It is in the middle range. Considering the previous record of the appellant and objective seriousness of the offence this starting point is justified. The appellant has 12 previous convictions from 2007 to 2012 with 9 of them for theft related offences.
11. Then the learned Magistrate had added 12 months for the aggravating factors. Namely this is a planned theft and the appellant lied and deceived the complainant. Added factor would be that the appellant took advantage of the vulnerability of the complainant. Therefore the factors considered by the learned Magistrate are correct and the period is also justified.
12. The mitigating factors considered by the learned Magistrate are that the appellant is 25 years old and living with a de-facto partner who is pregnant. Further you cooperated with the investigation. Four months were deducted for mitigation and further 11

months were then deducted for the Guilty plea. A period of 3 months was deducted for the time in remand. The final sentence was 18 months.

13. The learned Magistrate had considered the suspension of the sentence and correctly decided against it giving reasons.
14. Therefore there is no merit in any of the grounds of appeal and the appeal is therefore dismissed.
15. The appellant pleaded to this Court to send him for a rehabilitation program while serving the sentence. It is recommended to Prison Authorities to send the convict for suitable rehabilitation program.
16. Appeal is dismissed.



At Lautoka
28th October 2014


Sudharshana De Silva
JUDGE

Solicitors : Applicant in person
Office of the Director of Public Prosecutions for Respondent