

IN THE HIGH COURT OF FIJI
AT LABASA
[CRIMINAL JURISDICTION]

CRIMINAL CASE NO. HAC65 OF 2016

BETWEEN: **THE STATE**

AND: **TABAIWALU JOHN PICKERING**

Counsel: **Ms A Vavadakua for the State**
 Mr V Tuicolo for the Accused

Date of Hearing: **22 February 2018**

Date of Sentence: **02 March 2018**

SENTENCE

[1] Tabaiwalu John Pickering, you appeared before this Court on 22 February 2018 and pleaded guilty to a charge of theft contrary to section 291 (1) of the Crimes Act 2009. You are represented by counsel. You informed the Court that you were pleading guilty freely and voluntarily. I am satisfied your plea of guilty is unambiguous and informed. I convict you of theft as charged.

[2] You have admitted the following facts tendered by the prosecution in support of the charge:

On the 8th day of December 2016 at Vakamasuasua, in the Northern Division, the Accused, had stolen 1 x J1 Samsung mobile phone mobile valued at \$230.00 belonging to one Lenisa Diaga Madigi, with the intention to permanently depriving her of the said mobile phone. The Accused was aware that the said phone did not belong to him as he had literally taken the phone from the possession of the owner of the phone, Lenisa Diaga Madigi, without her consent, on the early hours of the 8th of December 2016 with the intention of permanently depriving the said Lenisa Diaga Madigi of the said mobile phone.

Ms. Lenisa Diaga Madigi had been returning from a Night Club on that 8th day of December 2016 at around 2a.m. when the Accused had committed this act of theft of the said mobile phone. Later on the same day, with the assistance of the Police Officers, the victim was able to recover the said mobile phone from the Accused as he had answered the stolen phone and given his location to the caller.

- [3] In mitigation your counsel has informed the Court that you are 23 years and married. You are employed as a welder by a construction company in Labasa. You earn about \$250.00 per week and you support your family. Your wife is expecting and she is depended on you for support. You regret your action. You co-operated with the police with the recovery of the stolen phone.
- [4] The offence you committed is serious. The maximum penalty for theft is 10 years imprisonment. The tariff depends on the nature of theft (*State v Saukilagi* [2005] FJHC 13; HAC0021X.2004S (27 January 2005)). I categorize your offending as simple theft. The tariff for simple theft is 2 to 9 months imprisonment (*Singh v The State* [2002] FJHC 118; HAA0035J.2002S (23 May 2002)).
- [5] In assessing your culpability, I take into account that the victim was a young woman and she was targeted at night on an isolated street when she was alone and returning home from a nightclub by foot. You may have been drunk when you committed the theft. The courts have a duty to denounce and deter conduct that may discourage women and girls from walking freely and safely on our streets without being targeted for theft.
- [6] Fortunately, you have taken responsibility for your conduct by pleading guilty to the charge. You did not use force or violence against the victim. No planning was involved. After you stole the phone from the victim, you admitted taking the phone when the police contacted you the following day. You immediately returned the phone when the police approached you at your home. You have been consistent with your expression of regret.
- [7] When you were arraigned on the charge in the High Court on 27 February 2017, you pleaded guilty to the charge. On 22 February 2018, when the plea was re-taken, you

maintained your guilty plea. I am satisfied that you are genuinely remorseful for your conduct.

[8] You saved the court time and resources by pleading guilty to the charge. I give your guilty plea and expression of remorse substantial weight. Another strong mitigating factor in your favour is your previous good character.

[9] The value of the stolen property was small and the property was recovered with your cooperation.

[10] You were arrested on 9 December 2016. You were granted bail on 2 February 2017. You were in custody on remand for nearly two months. I make a downward adjustment to your sentence to reflect your remand period.

[11] After taking into account all these factors, I sentence you to 4 months' imprisonment. I have considered and have decided to suspend your sentence for the following special circumstances:

- (1) You entered an early guilty plea and have taken responsibility for your conduct.
- (2) Your expression of remorse is genuine.
- (3) You are a first time offender.
- (4) You immediately returned the stolen phone when contacted by police.
- (5) There was no force or violence used in the commission of the offence.
- (6) You regret your conduct and are willing to rehabilitate.

[12] Finally, you are sentenced to 4 months' imprisonment suspended for 12 months. Suspended sentence explained to the offender.



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Hon. Mr Justice Daniel Goundar

Solicitors:

Office of the Director of Public Prosecutions for the State
Office of the Legal Aid Commission for the Accused