

IN THE MAGISTRATE'S COURT AT LABASA

CRIMINAL JURISDICTION

Criminal Case No. 582 of 2019

STATE

v

AVISHAL AVIKESH PRASAD

Appearance : **WSGT Lani** for the prosecution
Mrs Raj. R for the accused

Sentence : **27 July 2020**

SENTENCE

1. *Avishal Avikesh Prasad*, the accused, today is for sentencing for one count of *Theft* and one count of *Breaching Bail conditions* for contravening *section 291 (1)* of the *Crimes Act* and *section 25(2) (b)* of the *Bail Act* respectively.
2. The accused pleaded guilty to both the counts on 3 February 2020.
3. The brief summary of facts are that on 29 October 2019, the accused visit Ram Lakhani Singh (Ram) house at Bulileka and stayed there overnight. On the morning of 30 October 2019, when Ram was brushing his teeth outside, the accused search the house and found 4 \$50.00 notes inside Ram's pillow case. The accused took

the money and went. Later, Ram discovered that his \$200.00 was missing. Ram reported the matter to the police, investigation carried out where the accused admitted to the allegation. In doing so, the accused had breached his bail condition for criminal case number 64 of 2017, for re-offending.

4. The accused admitted to the above summary of facts on 9 March 2020 and convicted as charged.
5. The accused submitted his oral mitigation on 12 June 2020.
6. The maximum penalty for *Theft* is 10 years imprisonment. The tariff is 2 to 9 months for simple theft and 9 months and more for repeated offenders as set in ***Vakarauvanua v The State*** [2004] FJHC 116. The maximum penalty for *Breach of Bail Condition* is fine of \$2,000.00 or 12 months imprisonment. There is no set tariff for this offence.
7. In this case, you visit the victim's house and turn back and offended against the victim, after the victim accommodate you for free for a night. That is the aggravating factor.
8. The only compelling mitigating factor is that you are a young offender of 25 years old.
9. For your sentence, I will start with the offence of *Theft* as that is the most serious offence in term of the prescribed penalty and tariff. Your criminal record shows that you are a repeated offender. I therefore, pick 12 months as my starting point. I add 8 months for the aggravating factor. That increase your sentence to 20 months imprisonment. I reduce 4 months for your

mitigation. That reduce your sentence to 16 months imprisonment.

10. I reduce 5 months for your early guilty plea. That reduce your sentence to 11 months imprisonment.

11. I further reduce 2 weeks for the period you spent in remand. That reduce your sentence to 10 months and 2 weeks imprisonment.

12. I noted that there were partial recovery with the recovered amount of \$65.00. I reduce 2 weeks for that and that reduce your sentence to 10 months imprisonment.

13. Your final sentence for *Theft* is 10 months imprisonment.

14. Both the offences were committed under one transaction. I impose 8 months as your sentence for the offence of *Breaching Bail Conditions*.

15. I have considered *section 4* of the *Sentence and Penalties Act*, the principle of deterrence and rehabilitation. When viewing your records, it appears that you have not learned your lesson and still cannot reform yourself when given the opportunity. As such deterrent sentence is imposed.

16. Avishal Avikesh Prasad, I now sentence you as follows;-

a. Count 1 **Theft** 10 months imprisonment.

b. Count 2 **Breaching Bail** 8 months imprisonment.
Condition

C. Sentence for both the counts to be served concurrently.
Your principle sentence is 10 months imprisonment.

28 days to appeal.



A handwritten signature in blue ink, appearing to read "C. M. Tuberi", written over a horizontal line.

C. M. Tuberi

RESIDENT MAGISTRATE