

AT TAVUA
CRIMINAL JURISDICTION

Criminal Case No: 258 - 2020

STATE

-v-

AVISHAY AMIT KUMAR

Before : RM Fotofili L.
For Prosecution : Inspector Lenaitasi S. [Police Prosecution]
Accused : In Person, Waived Right To Counsel
Date of Sentence : 3rd of November, 2020

SENTENCE

BACKGROUND

1. **AVISHAY AMIT KUMAR**, you are to be sentenced upon pleading guilty to the following charge:

Statement of Offence

OBTAINING A FINANCIAL ADVANTAGE BY DECEPTION: Contrary to section 318 of the *Crimes Act No 44 of 2009*.

Particulars of Offence

AVISHAY AMIT KUMAR on the 28th day of July, 2020 at Tavua in the Western Division, by deception dishonestly obtained a financial advantage of cash \$1,000 from **RAJNESH RITESH NAND**.

2. I am satisfied that your guilty plea to the charge is voluntary and that you understand the consequence of your plea. The evidence tendered in support of your guilty plea and your admission in court make me sure that you committed the offence.
3. I convict you of the charge accordingly.

4. You were 19 years old at the time of committing the offence. You knew that the victim's father was in remand at the corrections centre as you met the victim's father there when you were remanded for another case. After getting out of remand, you called the victim several times pretending to be working for the Sugarcane Growers Council, Lautoka. You told the victim that a grant has been awarded in favour of the victim's father. You convinced the victim to bring personal documents belonging to his father such as the father's birth certificate and TIN letter in-order for the grant to be processed. You told the victim to bring the documents to Lautoka. The victim resides at Rakiraki. Following your instructions, the victim travelled from Rakiraki heading to Lautoka. On the way, you called the victim again telling him that he will be late and in-order to process the grant quicker, the victim was to send \$1,000 in advance via M-Paisa so by the time the victim reaches Lautoka, the grant would have been processed. This was a lie but the victim believed you. The victim sent \$1,000 through M-Paisa from Tavua, monies which you received on your phone or SIM 8425712 at Ba. You had registered that SIM number under someone else's name. You falsely used the stolen driver's license of Ajnesh Kumar Chand to register the SIM.
5. A police complaint was made and you were arrested and interviewed under caution by police. In your interview with police you admit that you were in remand for about 6 months. You have a case at Ba and Tavua. You admit that you went to Ba to withdraw \$1,000 sent by the victim. You had obtained the victim's phone number when you met the victim's father in remand. You admitted calling and telling the victim that you are from the grower's council and that a \$20,000 grant was approved. You told him to bring his father's personal documents. You later called him and told him to send you \$1,000 via M-Paisa. You used the driver's license of someone else to register a SIM number. You admit stealing that driver's license from Yasiyasi, Tavua. You have broken and thrown away that SIM and you destroyed it because the victim kept calling you telling you that you will be traced. You admitted and identified the attire you were wearing on the day you received the \$1,000 from the victim. These included a round neck t/shirt, shorts and hat or cap. When police showed you a CCTV footage from Valuephone, Ba, you admitted that the person in that footage was you. You admit using the money you received from the victim in paying for taxi fare, buying beer and eating with friends. There is no money left from that \$1,000. You tried to 'con' others by contacting them but no one except for the victim gave you money.
6. You have been in remand sine the 3rd of August 2020.
7. You had to be remanded considering the strength of the prosecution's case against you and that you ostensibly reoffended while on bail in for your other aggravated burglary case Tavua CF 254 – 19 or Extended Jurisdiction Tavua EJR 01 – 20 which is pending before me.

8. I will only consider 2 months of your time in remand as time served and I will deduct this from your sentence.
9. You are a first offender.
10. You are now 20 years old. You are married and you have a one year old child. You are a mechanic. You support your father who is asthmatic. You promise not to reoffend.

LAW

11. The maximum sentence that is imposable by law for the offence of obtaining financial advantage by deception, attracts a maximum sentence of up to 10 years imprisonment.

TARIFF

12. I have not been able to identify any local precedent outlining the tariff for this offence.
13. It may be worthwhile considering the case of State v Ngeon Chong Chee [2008] FJHC 38; HAC027.2008 (13 March 2008). This is a case when the Penal Code Cap 17 was in force. The case involved the use of fake passports to convince the victims or financial institutions that the defendants were the legitimate holders of their credit cards. The High Court adopted the general fraud tariff of 18 months to 3 years. For personation, the defendants were sentenced to 6 months imprisonment.

STARTING POINT

14. Considering the objective seriousness of your case **AVISHAY AMIT KUMAR**, I select a 2 year imprisonment term as a starting point from within the general fraud tariff.

AGGRAVATING FEATURE

15. You used someone else's identification to register or obtain a SIM number.
16. You exploited the information you obtained when in remand to perpetrate the offence against the victim once you were released from remand.

17. You made the victim travel from Rakiraki with his father's personal documents to meet you.
18. You tried to perpetrate the same 'con' with other potential victims but fortunately no one else sent you money in advance.
19. I increase your sentence to 3 years and 2 months imprisonment.

MITIGATION

20. You are young.
21. You are a first offender.
22. You have a family to support.
23. You have cooperated with police when they questioned you.
24. Your sentence is reduced to 2 years and 6 months imprisonment.

GUILTY PLEA

25. I accept that your guilty plea is early and I will reduce your sentence to 20 months imprisonment.

SUSPENSION

26. I can suspend your imprisonment term either in whole or in part pursuant to section 26 (1) and (2) (b) of the **Sentencing and Penalties Act 2009** if your sentence does not exceed 2 years imprisonment.
27. I also take into account the factors outlined in section 4 of the **Sentencing and Penalties Act 2009** when deciding whether or not to suspend your sentence.
28. Your sentence will be aimed at deterrence and is to punish you adequately.

SENTENCE

29. **AVISHAY AMIT KUMAR**, you are sentenced to 20 months imprisonment.
30. As I have explained earlier, I will deduct 2 months of the time you have spent in remand from your sentence.
31. You now have 18 months imprisonment remaining.
32. I am inclined to suspend this remaining term but only in part.
33. 6 months of your imprisonment term is suspended for the next 2 years.
34. You are not to commit any other offence [punishable with imprisonment] in the next 2 years because you risk this 6 months imprisonment that is held in reserve being activated.
35. You will serve 12 months imprisonment immediately.
36. I will engage the parties after pronouncing sentence so a determination can be made regarding the properties in police custody namely the driver's license of Ajnesh Kumar Chand which was used by the defendant to register a mobile SIM number which allowed him to contact and receive money from the victim and the defendant's attire [round neck t/shirt, shorts and cap] which the defendant wore when the defendant was at Ba to collect the money sent by the victim. A decision can be made pursuant to section 155 (1) of the **Criminal Procedure Act 2009** regarding these items.
37. 28 days to appeal.



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Lisiata T.V. Fotofili
Resident Magistrate

Dated at Tavua this 3rd day of November, 2020.