

AT TAVUA  
CRIMINAL JURISDICTION

Criminal Case No: 248 - 2020

STATE

-v-

MAIKELI MOCETADRA NALATU

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

**SENTENCE**

1. **MAIKELI MOCETADRA NALATU**, you have elected a Magistrates' Court trial and you have pleaded guilty to the following charge:

**Count 1**

*Statement of Offence*

**BURGLARY**: Contrary to section 312 (1) of the *Crimes Act No. 44 of 2009*.

*Particulars of Offence*

**MAIKELI MOCETADRA NALATU** on the 22<sup>nd</sup> day of July, 2020 at Matanagata Back Road, Vatukoula in the Western Division entered into the house of **JAYANTI LAL** as a trespasser with intent to commit theft therein.

**Count 2**

*Statement of Offence*

**THEFT**: Contrary to section 291 ( 1 ) of the *Crimes Act No. 44 of 2009*.

*Particulars of Offence*

**MAIKELI MOCETADRA NALATU** on the 22<sup>nd</sup> day of July, 2020 at Matanagata Back Road, Vatukoula in the Western Division dishonestly appropriated one pink NOKIA brand slide mobile phone valued at \$100 and a pink purse valued at \$15 containing

~~\$125 and some coins, the property of LILA WATI with intention to permanently deprive the said LILA WATI.~~

2. I am satisfied that your plea to both the counts is voluntary and that you understand the consequences of your guilty plea. The evidence tendered in support of your admission and your admission in court also supports your plea.
3. I find you guilty of both the counts and I convict you accordingly of these counts.
4. It was in the afternoon between 3pm to 5pm when you gained entry to the victim's house through the back door. The victim is 51 years old and a miner. You took the phone and a pink purse containing \$125 which belongs to the victim's mother. The items were on a drawer inside the house. You said that you went to the house to ask for water which I do not accept was your intention. You went there to scout and steal. You have used all the money that you stole to buy liquor. You have disposed and you have thrown the pink purse in a rubbish bin. You tried to pay off a taxi driver using the stolen phone as payment for your fare.
5. You were interviewed under caution by police. You remained silent during your interview.
6. The phone is in police custody.
7. I order the release of the recovered item or phone and it is to be returned to the owner Mr. Jayanti Lal or his mother or their agent as soon as practicable pursuant to section 155 (1) (c) of the Criminal Procedure Act 2009.
8. The prosecution and or police is to advise the victim as soon as practicable or no later than 7 days from today.
9. The defendant has been in remand since he first appeared before me on the 24<sup>th</sup> of July 2020.
10. I calculate that he has spent approximately 3 months in remand.
11. I will only consider 2 months of the defendant's time spent in remand as time served due to the strength of the prosecutions' case against him and that the defendant was suspected of committing another similar case in Vatukoula.
12. The defendant is a first offender.

13. The defendant is 25 years old. He is single and has no dependent. He seeks forgiveness and promises not to reoffend. He says he has learnt a lot in remand such as the importance of listening. He says that he regrets wasting the court's time.

#### **AGGREGATE SENTENCE**

14. Both the counts were committed in the course of the same transaction or founded on the same facts.
15. Pursuant to section 17 of the **Sentencing and Penalties Act 2009**, I will impose an aggregate sentence on the defendant for both the counts.
16. Since burglary is the most serious of the counts, I will use that as the foundation when passing his aggregate sentence for both the counts.

#### **MAXIMUM SENTENCE**

17. The maximum sentence a court can impose for burglary is up to 13 years imprisonment.

#### **SENTENCING RANGE or SENTENCING TARIFF**

18. There are authorities envisaging that the tariff for burglary is between 12 months to 3 years imprisonment [see for example **Waqavanua v State** [2011] FJHC 247; HAA013.2011 (6 May 2011)].
19. I have adopted and I have been applying the tariff of 20 months to 6 years imprisonment which was outlined by the Hon. Justice Perera V.S. in the High Court case of **State v Prasad** - Sentence [ 2017 ] FJHC 761; HAC 254.2016 ( 12 October 2017 ).
20. His Lordship opined that the tariff should be increased because the maximum penalty under the **Crimes Act 2009** is 13 years imprisonment and the previous tariff of 12 months to 3 years imprisonment is less than a quarter of the maximum term imposable. The tariff for robbery, aggravated robbery has been refined and the tariff

for these offences is proportionate to the maximum terms imposable for those offences.

21. More importantly, his Lordship reasoned the need for the increase in the tariff for burglary where he said the following:

*12. .... property offences such as theft, burglary and robbery are prevalent in this country. As a result, many people have opted to cage themselves inside burglar bars. Needless to say that the above offences also have a negative impact on the commercial activities in the country. Therefore, leniency with regard to the offences ... committed will send a wrong message to the society and it will make the protection of the community more difficult.*

*13. I am inclined to hold the view that the established tariff(s) for the offence of burglary is itself lenient.*

22. I applied the tariff of 20 months to 6 years imprisonment when sentencing the defendants Koresi Taranuku and Shanal Avikesh Kumar. Both cases were appealed to the High Court at Lautoka and both successfully had their sentences reduced. In both cases the High Court applied the tariff of 12 months to 3 years [see Taranuku v State [2019] FJHC 955; HAA41.2019 (27 September 2019) and Kumar v State [2020] FJHC 381; HAA48.2019 (29 May 2020)].
23. The High Court at Lautoka held that the tariff of 20 months to 6 years imprisonment was 'incorrect' although this is the tariff recommended by Justice Perera in State v Prasad.
24. I still prefer the tariff of 20 months to 6 years imprisonment and I wholly agree with the reasons advanced by his Lordship Justice Perera as to why this should be the tariff.

### **STARTING POINT**

25. Based on the objective seriousness of the offence, I select an aggregate starting point of 2 years and 6 months imprisonment.

### **AGGRAVATING FEATURES**

26. This was brazen. You committed the offence in broad daylight.
27. You tried to barter the phone as payment for your taxi fare.
28. I increase your aggregate sentence to 3 years and 6 months imprisonment.

### **MITIGATION**

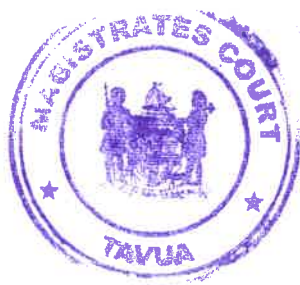
29. I do not see the recovery of the phone being volunteered by you. You gave it to the taxi driver as payment. I will not count the recovery of the phone in your favour.
30. However, you are a first offender.
31. I accept that you are remorseful.
32. I reduce your aggregate sentence to 2 years and 10 months imprisonment.

### **GUILTY EARLY**

33. You have pleaded guilty early.
34. For that, I reduce your aggregate sentence to 22 months imprisonment.

**SUMMARY**

35. **MAIKELI MOCETADRA NALATU**, you will receive a combined or aggregate sentence for both the counts.
36. Your sentence will be aimed at deterrence and is to punish you adequately.
37. You are sentenced to an aggregate 22 month imprisonment term.
38. As I have explained earlier, I will consider 2 months of your time in remand as time served and I will deduct this from your sentence.
39. You have 20 months imprisonment remaining.
40. I am inclined to suspend this remaining term but only in part.
41. You will serve 9 months imprisonment and the remaining 11 months imprisonment will be suspended for the next 3 years.
42. Do not commit any other serious offence or offence punishable with imprisonment in the next 3 years because you risk having the 11 months imprisonment that is held in waiting being activated [ explained to the defendant].
43. 28 days to appeal if any party is dissatisfied with the sentence.



.....  
Lisiate T.V. Fotofili

**Resident Magistrate**

Dated at TAVUA this 3<sup>rd</sup> day of November, 2020