

IN THE MAGISTRATES' COURT OF FIJI
AT TAVUA
CRIMINAL JURISDICTION

Criminal Case No: 251 - 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 : 3rd November 2020

SENTENCE

1. **MAIKELI MOCETADRA NALATU**, you have elected a Magistrates' Court trial and 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 11th day of July, 2020 at Bajpai, Vatukoula in the Western Division entered into the house of **NAVIN PRASAD** 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 11th day of July, 2020 at Bajpai, Vatukoula in the Western Division dishonestly appropriated a light blue JBL music box valued at

\$85, the property of NAVIN PRASAD with with intention to permanently deprive the said NAVIN PRASAD.

2. I am satisfied that your plea to both the counts is voluntary and that you understand the consequences of your 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 around lunch time. You entered the house through the front door and then you stole the music box from inside the house.
5. You were interviewed under caution by police. You admitted going for a road run. You then went to the house to ask for water. The door was open and you saw no one at home. You went inside the house and took the speaker. You took a short cut and you saw that the owner of the music box was following you in a vehicle. You admitted selling the music box to a friend. A search was conducted but the music box could not be recovered.
6. You have been in remand since you first appeared before me on the 28th of July 2020.
7. I calculate that you have spent approximately 3 months in remand.
8. I have considered the time you spent in remand and absorbed that when sentencing you earlier today for a similar offence in Tavua 248 – 20.
9. You will not get a second benefit for time spent in remand in this sentence.
10. You are a first offender.
11. 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

12. Both the counts were committed in the course of the same transaction or founded on the same facts.
13. Pursuant to section 17 of the **Sentencing and Penalties Act 2009**, I will impose an aggregate sentence on the defendant for both the counts.

14. 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

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

SENTENCING RANGE or SENTENCING TARIFF

16. 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)].
17. 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).
18. 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.
19. 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.

20. 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)].
21. 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.
22. 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

23. Based on the objective seriousness of the offence, I select an aggregate starting point of 2 years and 4 months imprisonment.

AGGRAVATING FEATURES

24. This was brazen. You committed the offence in broad daylight.
25. You sold the music box.
26. I increase your aggregate sentence to 3 years and 4 months imprisonment.

MITIGATION

27. You are a first offender.

28. I accept that you are remorseful.
29. You cooperated with police during your interview.
30. I reduce your aggregate sentence to 2 years and 8 months imprisonment.

GUILTY EARLY

31. You have pleaded guilty early.
32. For that, I reduce your aggregate sentence to 20 months imprisonment.

SUMMARY

33. **MAIKELI MOCETADRA NALATU**, you will receive a combined or aggregate sentence for both the counts.
34. Your sentence will be aimed at deterrence and is to punish you adequately.
35. You are sentenced to an aggregate 20 month imprisonment term.
36. No time spent by you in remand will be deducted from this sentence for the reason I have explained earlier.
37. I am inclined to suspend your 20 month imprisonment but only in part.
38. You will serve 9 months imprisonment and the remaining 11 months imprisonment will be suspended for the next 3 years.
39. 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].
40. I am aware of the sentence I passed earlier on you today in your other burglary and theft case Tavua CF 248 – 20.
41. I have considered the one transaction rule and the totality principle.

42. You will serve your immediate 9 months imprisonment in this case consecutive to your sentence in Tavua CF 248 – 20 as this will primarily reflect the totality of the offences you committed.
43. 28 days to appeal if any party is dissatisfied with the sentence.



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Lisiate T.V. Fotofili

Resident Magistrate

Dated at TAVUA this 3rd day of November, 2020