

IN THE MAGISTRATES' COURT OF FIJI
AT TAVUA
CRIMINAL JURISDICTION

Criminal Case No: 286 - 2019

Criminal Case No: 287 - 2019

STATE

-v-

VILIAME LEVA

Before : RM Fotofili L.
For The Prosecution : Sgt Priya P. [Police Prosecution]
For The Defendant : In Person
Date of Sentence : 22nd February 2022

SENTENCE

1. **VILIAME LEVA**, this sentence is for both your theft files Tavua CF 286 and CF 287 both of 2019.
2. Your plea of guilty in both files and admission in court and the evidence tendered, supports your guilty plea. I am also satisfied that you understand the consequences of your plea.
3. I find you guilty and convict you of the charge of theft in both these files.
4. In CF 286 – 2019 you have pleaded guilty to the following:

Statement of Offence

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

Particulars of Offence

VILIAME LEVA on the 15th day of December 2019 at Yaladro, Tavua in the Western Division dishonestly appropriated 1 black and red USB valued at \$20 and \$10 cash to the total value of \$30 the property of **ANISH KARAN VISHAL**, with the intention of permanently depriving the said **ANISH KARAN VISHAL**.

5. The items were inside the victim's vehicle. He left his vehicle unattended around 10pm and when returning to his vehicle, he found the vehicle ransacked. You had taken or stolen the items from inside his vehicle.
6. After the matter was reported to police, you were arrested and subsequently interviewed by police under caution. In your interview you voluntarily admitted that you had stolen the item specifically the USB.
7. The USB has been recovered and on the 18th of December 2019 an order pursuant to section 155(1)(c) of the **Criminal Procedure Act 2009** was made for the USB to be released or returned to the victim or owner.
8. In CF 287 - 2019 you have pleaded guilty to the following:

Statement of Offence

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

Particulars of Offence

VILIAME LEVA on the 15th day of December 2019 at Vatutavui, Tavua in the Western Division dishonestly appropriated 1 stallion, brown in colour valued at \$600, the property of **BIREN PRASAD**, with the intention of permanently depriving the said **BIREN PRASAD**.

9. The victim had tethered his horse on a grazing land in the morning. Around 4pm the victim discovered his horse missing. He searched the mountains thinking his horse may have wandered off but his search was unsuccessful.
10. After the matter was reported to police, you were arrested and subsequently interviewed by police under caution. In your interview you voluntarily admitted untying the horse and riding it to Yaladro.
11. The horse or stallion has been recovered and on the 18th of December 2019 an order pursuant to section 155(1)(c) of the **Criminal Procedure Act 2009** was made for the stallion to be released or returned to the victim or owner.
12. Your time in remand has been absorbed into your sentence which I passed on you earlier today for your burglary case CF 289 – 2019.
13. There is no need to absorb your time in remand into the sentence for these cases of theft as that would mean you unjustifiably get double or triple the benefit.

14. You are 20 years old. You are single. You are unemployed. You are the only male in your immediate family. You seek forgiveness.

AGGREGATE SENTENCE AND INSTINCTIVE SYNTHESIS APPROACH

15. The offences in both files CF 286 and 287 both of 2019 were committed in the course of the same transaction and or founded on the same facts and or form a series of offences of the same or similar character.
16. Pursuant to section 17 of the **Sentencing and Penalties Act 2009**, I will impose an aggregate sentence on you for both the offences of theft in both files.
17. I will also adopt an instinctive synthesis approach when sentencing you.
18. There are some factors that are worth highlighting before summarising your sentence.

MAXIMUM SENTENCE

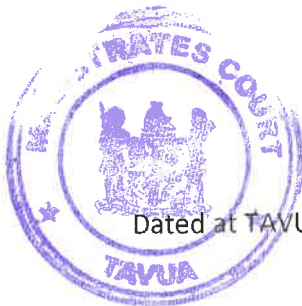
19. The maximum punishment for theft is up to 10 years imprisonment.

SENTENCING RANGE or SENTENCING TARIFF

20. The sentencing tariff for theft is as follows [**Ratusili v State** [2012] FJHC 1249; HAA011.2012 (1 August 2012)] :
- (i) for a first offence of simple theft the sentencing range should be between 2 and 9 months.
- (ii) any subsequent offence should attract a penalty of at least 9 months.
- (iii) Theft of large sums of money and thefts in breach of trust, whether first offence or not can attract sentences of up to three years.
- (iv) regard should be had to the nature of the relationship between offender and victim.

SUMMARY

32. **VILIAME LEVA**, you will receive an aggregate or combined sentence for your theft files CF 286 and 287 both of 2019.
33. You are sentenced to an aggregate 2 months and 12 days imprisonment.
34. To encourage your rehabilitation and swift integration back into society balancing that with the primary objective for deterrence, I will suspend your imprisonment term but only in part.
35. You will serve 12 days imprisonment immediately.
36. The remaining 2 months will be suspended for the next 9 months.
37. You are not to reoffend or commit any other serious offence in the next 9 months as you risk having your remaining 2 months imprisonment that is suspended or held in waiting, being activated.
38. I am cognizant of the sentence I pronounced on you earlier today in your burglary case CF 289 – 2019.
39. I am mindful of the one transaction rule and totality principle and section 22 of the **Sentencing and Penalties Act 2009**.
40. The theft offences and the burglary case were committed in a series and theft was a precursor. For example, you stole the stallion from Vatutavui, rode it and went on to Yaladro to commit the other theft and burglary counts. You must receive distinct punishment for these. Even if I order that you serve these 12 days imprisonment consecutive to your burglary sentence, the sentence to be served by you is not too overbearing or does not breach the totality principle.
41. I order that you serve your aggregate 12 days imprisonment for CF 286 and 287 both of 2019, **consecutive** to your burglary imprisonment sentence in CF 289 – 2019.
42. 28 days to appeal to the High Court.



Dated at TAVUA this 22nd day of February, 2022

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Lisiate T.V. Fotofili

Resident Magistrate