

IN THE MAGISTRATES' COURT
AT BA
CRIMINAL JURISDICTION

Criminal Case No. 532/2020

BETWEEN: **STATE**

PROSECUTION

AND: **NIRMAL NAVIN PRATAP**

ACCUSED

Counsel: PC 5647 Pranil Nair for Police Prosecution
 Accused unrepresented and in person.

Date of Trial: 27 March 2023
Date of Judgment: 27 June 2023
Date of Sentence: 16 April 2025

SENTENCE

Introduction

1. On 24 September 2020, Mr. Nirmal Navin Pratap ("the Accused") was charged and produced in Court with another person for 1 count each of Uttering and Possession with Intent to Utter Counterfeit Note contrary to section 166(3)(a)(a) of the Crimes Act 2009.
2. On 13 November 2020, the Accused with another pleaded Not Guilty to the charge against them. As per this Court's first predecessor's notes, on 18 January 2021, Prosecution amended the charge to include the serial number of the fake note. This amendment was put to the Accused on the same date and he pleaded Not Guilty.
3. On 22 April 2022, Prosecution filed an Amended Charge. The particulars of the offence were as follows:

Statement of Offence

Uttering and Possession with Intent to Utter Counterfeit Note: Contrary to Section 166(3)(a)(b) of the Crimes Act 2009.

Particulars of Offence

Nirmal Navin Pratap between 21st day of September 2020 and 22nd day of September 2020 at Ba in the Western Division had in his possession 3x \$50.00 counterfeit notes with serial number FEB6230034 and 1x \$100 counterfeit note with serial number FFA0003103 knowing them to be counterfeit with intent to utter the said currency.

4. Given the above amendment, the other person charged with the Accused was discharged. On the same date, the Accused entered a plea of Not Guilty. The matter was subsequently fixed for Trial.
5. On 27 March 2023, which was the date of Trial, the Accused was not present as such, this Court's first predecessor ordered for the matter to proceed to Trial in absentia as the Accused was aware of the Trial date.

6. The matter then proceeded to Trial with the Prosecution calling 10 witnesses and thereafter closing its case. This Court's first predecessor found that there was a case to answer. As the Accused was absent and unrepresented, the Court's first predecessor then adjourned the matter for Judgment.
7. On 27 June 2023, this Court's first predecessor delivered its Judgment where it found the Accused guilty as charged and convicted the Accused for the offence of Uttering and Possession with Intent to Utter Counterfeit Note.
8. The matter was then adjourned on various dates for Sentence before this Court's second predecessor. Subsequently, on 4 December 2023, the Accused appeared before this Court's second predecessor and was remanded with the matter pending Sentence.
9. On 19 January 2024, this Court's second predecessor released the Accused on bail with the matter then being adjourned for mitigation. When this Court took over proceedings on 24 July 2024, the Accused failed to appear in Court as such a Bench Warrant was issued against the Accused.
10. On 11 October 2024, the Accused was arrested under Bench Warrant and his bail in this matter was revoked. On 18 November 2024, this Court explained section 172 of the Criminal Procedure Act to the Accused and the Accused submitted that at the time of Trial, he was in Suva and that he had forgotten his Court date. With respect to whether the Accused had an arguable defence on merits, the Accused informed this Court that he completely denies the allegation against him.
11. The Accused and Prosecution then filed submissions regarding section 172 of the Criminal Procedure Act and on 12 March 2025, this Court refused to set aside the conviction entered against the Accused in his absence on 27 June 2023 as the Accused failed to satisfy the Court that his absence on the date of Trial was outside his control and because the Accused failed to satisfy the Court that he had an arguable defence on merits.
12. As such, the following are the brief facts of the case:
 - i. On 21 September 2020 at about 6pm, Viliame Pasoni ("Viliame") went to the home of his wife's younger sibling. At the time, the Accused was also there. The Accused has asked if they wanted barbeque to which they agreed. As such, they all got into Viliame's brother's car. Viliame drove while Qera sat in the front passenger seat and the Accused and Josua sat at the back.
 - ii. They then went to a Liquor store where the Accused gave Qera a \$50 note and told him to buy cigarettes. Qera had gone into the store.
 - iii. Ranji Lal, the shop owner, confirmed that an itaukei boy had come into her shop to buy "smoke". Ms. Lal received the \$50 note, checked the note and felt that it was fake. The note was returned to the itaukei boy who then left the shop.
 - iv. When Qera left the shop, he stated that he had informed the Accused of what had transpired as such the Accused said for them to leave.
 - v. They then went to a shop in Sarava and the Accused gave the same \$50 note he had previously given to Qera to Joshua. Joshua then went to the shop and after sometime the Accused called him to allow them to go to Lautoka.
 - vi. Subdar Ali Khan confirmed that an itaukei boy came to his shop to buy cigarettes and this boy gave \$50. Mr. Khan took the note and checked it in the light and saw that it was not a normal note. The boy left the note with Mr. Khan and left his shop. Mr. Khan then called the Police and informed them of the fake note.

- vii. Qera further stated that as they were handing to Lautoka, the Accused informed everyone in the vehicle that the notes were fake notes, the Accused told them to buy grog and change the money as they were fake notes.
- viii. Sevanaia Ratumaitavuki stated that fake notes were found at his home in Korovuto, Ba with \$100 being inside a bag and \$50 covered in a plate in the kitchen. Mr. Sevanaia testified that the Accused had these fake notes. Salote Waqali and Filomena Toga both confirmed that the bag in which the \$100 fake note was found in, belonged to the Accused.
- ix. The Accused was subsequently arrested after the matter was reported.

13. The Court will now proceed to Sentence the Accused in this matter.

Objective Seriousness

14. Considering the nature of this crime which targets innocent commercial businesses, the objective seriousness is materially significant.

Sentencing Purpose

15. Considering that the primary purpose of this sentence is founded on the principle of deterrence. It is the responsibility of the Court to deter others from committing such offences of the same or similar nature as well as to protect the community from those who commit such offences.
16. A deterrent sentence for such offences of this nature demonstrates the gravity of the offence and reflects the society's immediate denouncement of such crimes.

Sentencing Regime

17. The maximum penalty for the offence of Uttering and Possession with Intent to Utter Counterfeit Note: Contrary to Section 166(3)(a)(b) of the Crimes Act 2009 is 5 years imprisonment.
18. There are no sentencing preference or tariff for this offence.
19. The case of Dean v State: Criminal Appeal Case No. HAA 08 of 2009 (3 June 2019) dealt with an appeal pertaining to a sentence for 1 count of Uttering Counterfeit Notes contrary to section 166(1) of the Crimes Act which is where a person, tender, utters or presents in any transaction any false or counterfeit (a) coin resembling any current coin knowing it to be false or counterfeit or (b) currency note. The maximum penalty for this offence is also 5 years imprisonment.
20. The Appellant in Dean [supra] had been sentenced to 17 months imprisonment. It was found that the Appellant had, prior to being sentenced, been in remand for 18 months but only 6 months was considered as time served by the Learned Magistrate. His Lordship Justice Wimalasena (as he then was) found that the Appellant had served a total of 21 months (in addition to the 18 months in remand, the Appellant had served 3 months from his 17 months imprisonment term) which was a term longer than his Sentence and therefore released the Appellant from Prison.
21. Although Dean [supra] did not outline a tariff, it would seem that the High Court found no issue with the 17 month imprisonment term imposed by the Learned Magistrate as well as the fact that the Appellant had served a 21 month imprisonment term which may have been sufficient punishment for an offending under section 166(1) of the Crimes Act 2009.

Level of Harm

22. It is evident that you had not been able to deceive the two shop owners with the counterfeit note. Thus, I find the level of harm is low.

Mitigating and Aggravating Factors

23. The Court notes the mitigation offered by you.
24. Further, the Court was informed that you have the following previous convictions at the time of Sentencing you:
- i. Assault Occasioning Actual Bodily Harm – Lautoka CF 511/17 – Sentenced on 9 August 2017 to 6 months imprisonment suspended for 3 years. Final DVRO issued;
 - ii. Assault Causing Actual Bodily Harm – Lautoka CF 1061/17 – Bound over in the sum of \$200 for 2 years; and
 - iii. Unlawful Wounding – Suva CF 12/23 – Sentenced to 15 ½ months imprisonment suspended for 5 years.
25. You have not provided the Court with any evidence of any significant contributions made by you to your community. As such, considering section 5 of the Sentencing and Penalties Act 2009, the Court is unable to provide you any discount for your previous character.
26. There are no discernible aggravating factors other than the factors subsumed in the element of the offending.

Sentence

27. Considering the objective seriousness and the purpose of this sentence, I select 28 months as the starting point.
28. For your mitigating circumstances as offered by you, I will deduct 5 months leaving you with a balance of 23 months imprisonment.
29. Section 26(1) of the Sentencing and Penalties Act allows a court to make an order suspending the whole or part of the sentence if it is satisfied that it is appropriate to do so in the circumstances whilst section 26(2)(b) provides the Magistrates Court with the discretion to suspend a sentence where the sentence does not exceed 2 years.
30. However, the Court does not find that this is a case where a suspended sentence or even a partly suspended sentence is warranted as at the time of the offending, you had 2 previous convictions. It is evident that from your last sentence on 5 June 2018, the bound over period afforded to you did nothing to allow you to rehabilitate yourself (vide State v Chand [2002] FJCA 50; AAU0027U.2000S (1 March 2002) citing R v Petersen [1994] 2 NZLR 533).
31. As such, you are to serve your 23 months sentence with immediate effect.
32. Section 18(3) of the Sentencing and Penalties Act provides the Court with the discretion to fix a non-parole period if the imprisonment term is less than 2 years but more than 1 year. However, considering that your level of harm was low in this offending, I decline to impose a non-parole period.

33. Further, the Court is mindful that you have been in custody as follows:

- i. 24 September 2020 to 5 February 2021 – 134 days or 4 months and 12 days
- ii. 4 December 2023 to 19 January 2024 – 46 days or 1 month and 15 days
- iii. 11 October 2024 to 16 April 2025 – 187 days or 6 months 5 days.

34. Considering section 24 of the Sentencing and Penalties Act, 12 months will be considered as time served by you.

35. Thus, your actual sentence to be served is now 11 months.

36. Any party aggrieved with the Court's decision has 28 days to appeal to the High Court.



A handwritten signature in black ink, consisting of several loops and a long horizontal stroke extending to the right.

N. Mishra
Resident Magistrate