

**IN THE HIGH COURT OF FIJI**  
**AT LAUTOKA**  
**CRIMINAL JURISDICTION**

**High Court Criminal Case No.**  
**HAC 188 of 2018.**

**STATE**

**v**

**JOSESE MATARARABA**  
**PENISONI BOLADRAU**  
**JONE VERESI CAGI**

**M. J. Niudamu** for the State.

**Miss. Vulimainadave**(L.A.C.) for the Accused.

**Date of Hearing** : 11 and 12 December 2018

**Date of this Sentence** : 14 December 2018.

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**SENTENCE**

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- 1.] These three accused were charged with one count of theft of marijuana to the value of \$1.32 from the Police Station at Rakiraki.
  
- 2.] The second accused has absconded but both the first and third accused indicated to the Court on first appearance that they wished to plead guilty to the charge.

3.] The Count was put to them and they did indeed enter a plea of guilty. This Court ascertained through questioning, that their pleas were unequivocal.

4.] A set of relevant facts were put to them on the second day of hearing and on their agreement to the facts, they were each found guilty and convicted of the count of theft.

**5.] Facts**

On the 19<sup>th</sup> September, all three were remand prisoners being held at Natabua Remand Centre. There were to be produced in the Rakiraki Magistrates Court to answer to a court case there. While waiting, they were being held in the cell block of the Rakiraki Police Station. In the course of the afternoon, they saw that the door to the Exhibits Room was ajar. They entered the room and stole a small packet of marijuana leaves valued at \$1.32.

6.] About 30 minutes later a constable was conducting his routine check of the cell block and saw the exhibit room door open. He locked the accused in their cell and called colleagues to search them. The officer in charge of the exhibits saw that exhibits were scattered inside the room. They found a small amount of leaves wrapped in a T-shirt with the accused.

7.] Both these accused (Acc 1 and Acc 3) admitted under caution that they had entered the room and stolen the leaves.

## **8.] Analysis**

The Court is astonished that the D.P.P. would waste the High Court's time and resources by bringing a petty theft case of goods to the value of \$1.32 to the court by way of Information. It should have been charged in the Magistrates Court.

- 9.] A sentence for simple theft being the first time is a sentence in the range of suspended sentence to 9 months' imprisonment.
- 10.] The actions of these two accused were committed spontaneously and foolishly when they were faced with the temptation of an open door in an unguarded Police Station.  
The negligence of the Rakiraki Poiiice in leaving them unguarded and in sight of temptation is a mitigating factor for these young men. There was no planning, the goods stolen of no real value, and the exhibit recovered.
- 11.] The first accused is 20 years old, single and unemployed. In mitigation, he tried to paint the missing accused as the "ring leader" but the Court is bound to sentence on the facts admitted.
- 12.] The third accused is 26 years old, also single and unemployed. He too was placing blame on the absconding co-accused. The Court has had particular regard to the factors listed in section 4(2) of the Sentencing and Penalties Act ("the Act") 2009, including but not limited to the nature and gravity of the offence, the obvious display of remorse of these two when appearing in Court, and the pleas of guilty.

- 13.] These young men acted rashly in the face of temptation and consequent to the negligence of the Police in Rakiraki.
- 14.] Pursuant to section 15 (1)(h) of the Act, I order that the convictions already made be recorded and that the two accused be discharged without condition.
- 15.] For the avoidance of doubt, this Court is not aware of the nature of proceedings involving these accused in Rakiraki, Those proceedings are irrelevant to this sentence.

**16.] Orders**

1. Both accused are convicted of theft
2. Those convictions are to be recorded
3. They are discharged.
4. Bench warrant for second accused be extended, returnable in Court 1 on January 28<sup>th</sup> at 9.30am



*P. K. Madigan*

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**P. K. Madigan**  
**Judge**  
**High Court Lautoka**