

**IN THE MAGISTRATES' COURT OF FIJI
AT TAVUA
CRIMINAL JURISDICTION**

Criminal Case No: 52 of 2016

STATE

-v-

LUKE TUI

For Prosecution : SGT Samy [Police Prosecution]
For the Defendant : Ms Henao [Legal Aid Commission]

Date of Sentence : 11th day of September 2018

SENTENCE

1. 1. **LUKE TUI**, you are here, to be sentenced upon pleading guilty to the following charge (alternative count):

Statement of Offence

RECEIVING: Contrary to Section 306 [1] of the Crimes Act No. 44 of 2009.

Particulars of Offence

Luke Tui between the 20th day of February, 2016 and the 21st day of February, 2016, at Tavua in the Western Division dishonestly received a JLT mobile phone knowing the same to be stolen.

1. 2. You co-accused pleaded guilty to the principal count of Theft and was sentenced to 6 months imprisonment.
1. 3. You pleaded not guilty to the principal count of theft but pleaded guilty to the lesser or alternative offence of receiving.
1. 4. The prosecution has accepted your plea to the lesser count and proposed the facts, which you have understood and admitted.
1. 5. I am satisfied that your plea is unequivocal and that you understand the repercussion of your plea. I am also satisfied that the facts which you have admitted is sufficient to convict you and I have found you guilty accordingly.
1. 6. You admitted the facts which reveal that during the period in question, you were in town and you bought the mobile phone for \$24.00 although you knew that it would normally cost more than a \$100 if it was sold in the shop. You only had \$24.00 with you and the seller of the phone sold you the phone for that amount.
1. 7. The circumstance of the transaction was obviously suspicious and an ordinary person and you would have known that.

1. 8. In your record of interview with the police, you admitted buying the phone for that low amount. You admitted that you knew that it should not cost \$24.00.
1. 9. You tell me that you have been in remand for 21 days.
1. 10. I have checked the court record and this number is not consistent with the record. You were first produced on the 1st day of March 2016 and you were on bail ever since.
1. 11. You must have been in remand for some other matter.
1. 12. I calculate though that you may have spent up to 2 days in police custody because of the case.
1. 13. You have no previous conviction.
1. 14. In your mitigation you said that you are 22 years old and single. You are a farmer and you earn \$50 per week from farming. You stay with your parents and you look after them. You are asking for a second chance and promise not to re-offend.

Law and the Tariff

1. 15. The maximum punishment for receiving is 10 years imprisonment.
1. 16. The courts have accepted between 1 to 3 imprisonment years as the appropriate sentencing range [see for example **State v Talemaibau** [2011] FJHC 733; HAC130.2010 (18 October 2011)].

Starting Point

1. 17. Considering the circumstance of your case, I select 1 year imprisonment as a starting point, which is at the lower end of the sentencing range.

Aggravating Factor

1. 18. I don't find any aggravating feature in your case, so I will not increase your sentence.

Mitigating Factors

1. 19. You are young and you have a past good history. You have cooperated with the police during your police interview. Your sentence will be decreased.
1. 20. Although time in custody is not necessarily mitigation, I will consider it here as it was only 2 days.

1. 21. Your sentence is reduced now to 9 months imprisonment.

Guilty Plea

1. 22. Your guilty plea was not early. However, I will still give you some discount for pleading guilty nonetheless.

1. 23. Your sentence is reduced by 2 months because of this.

1. 24. Your interim sentence now sits at 7 months imprisonment.

Suspended Sentence

1. 25. The law allows me to suspend your imprisonment sentence either in whole or in part.

1. 26. Especially because you are young and you have a good history, I'm inclined to suspend your 7 month imprisonment term for 3 years.

1. 27. This means that this 7 month imprisonment term will be held in waiting for the next 3 years.

1. 28. Commit any other offence in the next 3 years and this 7 month imprisonment term may be activated.

1. 29. This sentence is below the sentencing tariff or range but your sentence is reflective of the circumstance of your case.

Final Sentence

1. 30. In summary, your sentence is as follows:

7 month imprisonment which is suspended for the next 3 years.

1. 31. Pursuant to section 155 (1) (c) of the **Criminal Procedure Act 2009**, I order the release of the phone to the owner Laisenia Naituva.

1. 32. You have 28 days to appeal to the High Court.

LISIATE TV FOTOFILI

Resident Magistrate

At Tavua this 11th day of September, 2018.