

IN THE HIGH COURT OF FIJI
AT LAUTOKA
CRIMINAL JURISDICTION

CRIMINAL CASE NO.: HAC 164 OF 2013

STATE

-v-

EREMASI TUILO

Counsels : **Mr. Josaia B. Niudamu for the State**

Accused In person

Date of Sentence : **6 March 2014**

SENTENCE

1. You are charged under the following counts:

COUNT 1

Statement of Offence

AGGRAVATED BURGLARY: Contrary to Section 313 (1) (a) of the Crimes Decree No. 44 of 2009.

Particulars of Offence

EREMASI TUILO, EMOSI DAUYA AND JOELI RADUVA in the company of each other, between 21st day of July 2013 and the 22nd day of July 2013 at Nadi in the Western Division entered into the **NATIVE FIJIAN HANDICRAFT SHOP** as trespassers with intent to commit theft therein.

COUNT 2

Statement of Offence

THEFT: Contrary to Sections 291(1) of the Crimes Decree No. 44 of 2009.

Particulars of Offence

EREMASI TUILO, EMOSI DAUYA AND JOELI RADUVA in the company of each other, between 21st day of July 2013 and the 22nd day of July 2013 at Nadi in the Western Division stole 3 tabua valued at \$1200.00, 1 Toshiba laptop valued at \$600.00, and Blue safe valued at \$400.00, and cash of FJD\$700.00, NZ\$2000, US\$1000, EURO 300 and Pounds 60 all to the total value of \$6260.00 from the **NATIVE FIJIAN HANDICRAFT SHOP**, the property of **RAMESH PRASAD**.

2. You pleaded Not Guilty to both the charges on 22nd October 2013. Then on 21st February 2014, you informed court that you want to change the plea. On 27th February you pleaded Guilty to both counts and admitted the Summary of Facts on the same day.
3. The Summary of Facts submitted by the State Counsel states as follows:

Between the 21st July 2013 and the 22nd July 2013 between 1pm and 9am, one Eremasi Tuilo, a 34 year old gardener of Korovuto, Nadi and two others broke and entered into the Native Fijian Manufacturing Handicraft Shop in Nadi Town and stole from therein the following items:-

1. 3 Tabua's valued at \$1,200
2. 1 Toshiba Laptop valued at \$600
3. 1 blue safe valued at \$400
4. Cash Monies of FJD\$700
5. Cash Monies of NZ\$2000
6. Cash Monies US\$1000
7. Cash Monies EURO\$300
8. Cash Monies of \$60 POUNDS

Total Value of \$6,260.

On the 21st July 2013, at around 1pm, Ramesh Prasad [complainant] 53 years old of Navo, Nadi locked the daily earnings in the safe and securely locked the doors of his shop. On the 22nd July 2013, at about 9am, the complainant returned to his shop and discovered that his shop had been broken into and the above mentioned items stolen from therein. He also discovered that a ply board wall was levered open to gain entrance into the shop.

The matter was reported at the Nadi Police Station and upon receiving information, the accused and two others were arrested and interviewed under caution, wherein

the accused admitted to committing the offences. Later the accused and the two others were charged for one count of Aggravated Burglary and one count of Theft. The only items recovered by the police includes:

1. 2 Tabua's valued at \$800
2. 1 Toshiba laptop valued at \$600
3. 1 blue safe valued at \$400.

Total Value of \$1,800.

4. After carefully considering your Plea to be unequivocal, this Court found you guilty for aggravated burglary and theft and accordingly you are convicted under Section 313 (1) (a) and Section 291 (1) of the Crimes Decree respectively.
5. You stand convicted for Aggravated Robbery and Theft.
6. Section 313 (1) prescribes a maximum sentence of 17 years imprisonment for aggravated burglary.
7. Section 291 (1) prescribes maximum sentence of 10 years for the offence of Theft.
8. Considering the tariff for the offence of Aggravated Burglary in **Tabeusi v State** HAC 95-113/2010 and **Mucunabitu v State** HAC 17 of 2010, the Court accepted between 18 months to 3 years as tariff.
9. Tariff for the offence of theft was discussed in several cases. In **Saukilagi v State** [2005] FJHC 13 HAC 0021/2004 (27 January 2005) the Court accepted between 2 to 9 months as tariff for simple theft.
10. You are not a first offender. However, this is your first offence for theft related offences.
11. Considering the nature of the offence and all other circumstances, I commence your sentence for the 1st count at 24 months.
12. State had submitted following aggravating factors.
 - (a) The offence was at Handicraft Center that caters for Tourism Industry.I add 6 months for the above aggravating factor and now your sentence is 30 months.
13. I deduct 10 months for your early guilty plea. Now your sentence is 20 months.

14. Mitigating circumstances are:

- (a) You are remorseful and seek forgiveness of this court,
- (b) You are married and father of two children aged 9 & 5 years,
- (c) FJD \$ 180.00 worth items were recovered.

15. Considering above, I reduce 4 months of your sentence, now your sentence is 16 months.

16. I deduct 7 more months for the time period you spend in remand. Now your sentence is 9 months.

17. Considering all above and nature of the offence, I impose 8 months imprisonment for the offence of theft.

18. Both the offences stated above were committed in the course of same transaction therefore, I order both sentences to run concurrently.

19. You are pleading the Court that you be given another chance in your life.

20. You are pleading the Court to impose a non custodial sentence.

21. Section 26 (1) of the Sentencing and Penalties Decree states as follows:

On sentencing an offender to a term of imprisonment a Court may make an order suspending, for a period specified by Court, the whole or part of the sentence, if it is satisfied that it is appropriate to do so in the circumstances.

22. After considering all circumstances, I act under Section 26 (1) of the Sentencing and Penalties Decree and suspend your sentence to a period of 3 years. The nature of the suspended sentence is explained to the accused.

Summary;

23. You are sentenced to 9 months imprisonment for aggravated burglary and 8 months imprisonment for the Theft. Both sentences to run concurrently and suspended for 3 years.

24. 30 days to appeal

Sudharshana De Silva
JUDGE

AT LAUTOKA
6th March 2014

Solicitors for the State : Office of the Director of Public Prosecution for the State
Solicitors for the Accused: Accused In person