

IN THE HIGH COURT OF FIJI
AT LAUTOKA
CRIMINAL JURISDICTION

CRIMINAL CASE NO.: HAC 211 OF 2013

STATE

-v-

KULINIO NASILOKIA

Counsels : Ms. L. Latu for the State

Accused In person

Date of Sentence : 17 June 2014

SENTENCE

1. You are charged as follows.

COUNT 1

Statement of Offence

BURGLARY: Contrary to Sections 312 (1) of the Crimes Decree No. 44 of 2009.

Particulars of Offence

KULINIO NASILOKIA on the 4th day of November 2013, at Ellington, Rakiraki in the Central Division, entered into the dwelling house of **Shyam Lal**, with intent to steal therein.

COUNT 2

Statement of Offence

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

Particulars of Offence

KULINIO NASILOKIA on the 4th day of November 2013, at Ellington, Rakiraki in the Western Division, stole Forme mobile phone with charger valued \$100, cash \$55 and Grog valued \$10, total value of \$185.00 the property of **Shyam Lal**.

THIRD COUNT

Statement of Offence

THEFT: Contrary to Section 291 (1) of the Crimes Decree 44 of 2009.

Particulars of Offence

KULINIO NASILOKIA on the 4th day of November 2013, at Ellington, Rakiraki in the Western Division, stole 1 Acer Laptop valued \$2,306.94, and cash \$60.00, total value of \$2,491.94 the property of **Doreen Lata**.

2. You pleaded guilty to above charges on 29.5.2014 on the first day plea was taken. You admitted the summary of facts on 30.5.2014.
3. The Summary of Facts submitted by the State Counsel states as follows:

The accused in this matter is Kulinio Nasilokia, 23 year old at the time of offending, farmer of Nalalawa Village, Ra.

The complainants in this matter are Shyam Lal (PW1), 53 years old, farmer of Ellington, Rakiraki and Doreen Lata (PW2), 27 years old, Clerical Officer, also of Ellington, Rakiraki. PW1 is residing with his wife, son namely Ashnil Lal (PW3) and his wife PW2 and their child at Ellington, Rakiraki.

On the 4th day of November 2013, at about 1.30am, after the Diwali celebration, PW1 and his entire family members went off to bed, all windows and doors locked, with the lights switched off. Sometimes between 1.30am to 3.50am, the accused entered the dwelling house of PW1 by removing the louver blades from the sitting room. He entered into the house and notice that everyone in the house was asleep. He entered into PW1's prayer room, took some money from there and fled the house with the following items:

1. 1 x Forme phone with charger valued at \$100.00
2. \$55.00 cash

3. \$10.00 worth of Grog
4. 1 x Acer Laptop valued \$2,306.94
5. \$60.00 cash.

All to the total value of \$2,521.94. The first three items indicated above is the property of PW1. And the two last items listed are the property of PW2.

After stealing the above items, the accused left the PW1's dwelling house and walked towards Navolau.

At about 7.30am on the above mentioned date, PW2 and PW3 woke up and realized that someone had broken into the house, removing the 3 louver blades from the sitting room windows, with the above items missing.

The matter was reported to Rakiraki Police Station. During investigations, the police received information that someone was trying to pawn the laptop.

The accused was arrested and cautioned interviewed during which he admitted entering the dwelling house as reflected in questions 75 to 77. At question 80 and 83 he admits stealing some money. At questions 81, he admits to stealing the Forme phone with its charger and the Laptop.

The only item recovered is the Acer Laptop valued \$2,306.94.

4. After carefully considering your Plea to be unequivocal, this Court found you guilty for one count of burglary and two counts of theft and accordingly you are convicted under Section 312 (1) and Section 291 (1) of the Crimes Decree respectively.
5. You stand convicted for Burglary and Theft.
6. Section 312 (1) prescribes a maximum sentence of 13 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 Burglary in **Tabekusi 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.

*“The tariff for simple larceny on first conviction is 2-9 months (**Ronald Vikash Singh v. State** HAA 035 of 2002) and on second conviction a sentence in excess of 9 months. In cases of the larceny of large amounts of money sentences of 1 ½ years imprisonment (**Isoa Codrokadroka v. State** Crim. App. HAA 67 of 2002) and 3 years imprisonment have been upheld by the High Court (**Sevanaia Via Koroi v. State** Crim. App. HAA 031 of 2001S). Much depends on the value of the money stolen, and the nature of the relationship between victim and the defendant. The method of stealing is also relevant.”*

10. You have 6 previous convictions.

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) You broke into a domestic house by removing 3 louver blades while the family members were fast asleep and value of items stolen is \$ 2,521.94

13. I increase your sentence by 6 months for the above aggravating factor. Now your sentence is 30 months.

14. Mitigating circumstances of the accused are:

- (a) You are married and wife is 9 months pregnant.
(b) You are remorseful.
(c) Items to the value of \$2306.94 were recovered.

15. I deduct 6 months for the above mitigating factors. Now your sentence is 24 months.

16. I deduct 8 months for the guilty plea. Now your sentence is 16 months.

17. You have been in remand from 8th November 2013. I deduct 7 months for that period. Now your sentence is 9 months.

18. I take a starting point of 18 months in respect of each theft charge against the accused. I add 3 months for the aggravating circumstances and deduct 6 months for mitigating circumstances. Further I deduct 5 months for the Guilty plea. Then the sentence is 10 months. When the time period in remand is deducted the sentence is 3 months.

19. All the offences stated above were committed in the course of same transaction, therefore, I order all sentences to run concurrently.

Summary;

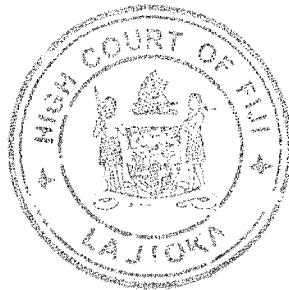
20. You are sentenced as follows:

1 st Charge of Burglary -	9 months
2 nd Charge of Theft -	3 months
3 rd Charge of Theft -	3 months

21. Although you do not deserve a suspended sentence considering your previous convictions considering the fact that your wife is 9 months pregnant and you are the sole bread winner, this Court will give you a final chance to rehabilitate by suspending the operation of all these sentences for a period of 3 years.

22. The suspended sentence is explained to the accused.

23. 30 days to appeal




Sudharshana De Silva
JUDGE

AT LAUTOKA
17th June 2014

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