

IN THE HIGH COURT OF FIJI AT SUVA

CASE NO: HAC. 240 of 2018

[CRIMINAL JURISDICTION]

STATE

V

1. JOSATEKI WAINIQOLO
2. FILIPE TUITUIVALU

Counsel : Ms. S. Serukai for State
Ms. L. Ratidara for 1st and 2nd Accused

Hearing on : 24 October 2018

Sentenced on : 12 November 2018

SENTENCE

1. Josateki Wainiqolo and Filipe Tuitiuvalu, you pleaded guilty to one count of aggravated burglary and one count of theft and were convicted accordingly. The charges reads thus;

FIRST COUNT

Statement of Offence

Aggravated Burglary: contrary to section 313 (1)(a) of the Crimes Act of 2009.

Particulars of Offence

JOSATEKI WAINIQOLO and **FILIPE TUITUIVALU** between the 20th of

April, 2018 and 5th of May, 2018, at Baulevu, Naitasiri, in the Central Division, entered into the house of Pranita Prasad as a trespasser with intent to steal.

SECOND COUNT

Statement of Offence

Theft: contrary to section 291 (1) of the Crimes Act of 2009.

Particulars of Offence

JOSATEKI WAINIQOLO and **FILIPE TUITUIVALU** between the 20th of April, 2018 and 5th of May, 2018, at Baulevu, Naitasiri, in the Central Division, stole 1 x Phillips brand flat screen television and remote valued at \$1000 and 1 x Panasonic Brand DVD Deck and remote valued at \$200, all to the total value of \$1,200, the property of Pranita Prasad.

2. Both of you have admitted the following summary of facts;

Brief Background:

- *The complainant is one Pranita Prasad, 32 years old of Baulevu, Naitasiri.*
- *The 1st accused is Josateki Wainiqolo, 18 years old, unemployed of Koroqaqa, Baulevu.*
- *The 2nd accused is Filipe Tuituivalu, 18 years old, farmer of Baulevu.*

Offence:

- 1 *Between the 20th of April and the 5th of May, Josateki Wainiqolo and Filipe Tuituivalu noticed that the complainant's house was empty. One evening, they planned to break into Pranita's house with the intention to commit theft.*
2. *As they arrived to the complainant's house, Josateki removed the louver blades of the window and went into the house.*
3. *Josateki then took the TV, the DVD deck and the remotes and passed it through the same window he used to enter the house. The said items were passed to the Filipe while he was outside.*
4. *After passing the items through the window, he then exited the house and put the removed louvers back.*

In regards to the count of Theft contrary to section 291(1) of the Crimes Act, 2009, Josateki Wainiqolo and another stole:

- (i) *Phillips flat screen television and remote control worth \$1,000.*
- (ii) *Panasonic DVD deck and remote control worth \$200.*

The total value of items stolen \$1,200.00.

After the investigations concluded, it was revealed that all the above items were

recovered from one Sameer Kumar, 39 years old, residing in Baulevu, Nausori.

Caution Interview and the Charge:

1. Josateki Wainiqolo was arrested on the 23rd of May, 2018. He was then interviewed under Caution on the 23rd of May, 2018 and he had admitted to the unlawful acts [Q.39 – Q.49], where he voluntarily admitted to the allegation of Aggravated Burglary and Theft.
2. Per his record of interview [Q.39 – Q.49] admitted that he removed the louver blades, he went into the house, picked up the TV screen, DVD deck with the remotes and passed it through the window.
 - A copy of the 1st accused's RO1 is attached.
3. Filipe Tuitiivalu was also arrested on the 23rd of May, 2018. He was also interviewed under Caution on the 23rd of May, 2018 and he admitted to the unlawful acts [Q.37 – Q.41], where he voluntarily admitted to the allegation of Aggravated Burglary and Theft.
4. Per his record of interview [Q.37 – Q.41] admitted that stayed outside and helped remove the TV screen, DVD deck and remotes from the complainant's house.
 - A copy of the 2nd accused's RO1 is attached.

They were then charged on the 24th of May, 2018.

In light of the above, both the accused have pleaded guilty to Aggravated Burglary contrary to section 313(1)(1) and Theft contrary to section 291(1) of the Crimes Act, 2009 of their own free will.

3. As I have explained in *State v Prasad* [2017] FJHC 761; HAC254.2016 (12 October 2017) and *State v Naulu* [2018] FJHC 548 (25 June 2018), based on the tariff endorsed by the Supreme Court for the offence of aggravated robbery in the case of *Wise v State* [2015] FJSC 7, the tariff for the offence of aggravated burglary which carries a maximum penalty of 17 years imprisonment should be an imprisonment term within the range of 6 years to 14 years.
4. The offence of theft contrary to section 291 of the Crimes Act carries a maximum sentence of 10 years. In the case of *Waqa v State* [HAA 17 of 2015], this court held that the tariff for the offence of theft should be 4 months to 3 years imprisonment.

5. The two offences you are convicted of are founded on the same facts. Therefore, in view of the provisions of section 17 of the Sentencing and Penalties Act, I consider it appropriate to impose an aggregate sentence of imprisonment against each of you for the two offences you have committed. Section 17 of the Sentencing and Penalties Act 2009 ("Sentencing and Penalties Act") reads thus;

"If an offender is convicted of more than one offence founded on the same facts, or which form a series of offences of the same or a similar character, the court may impose an aggregate sentence of imprisonment in respect of those offences that does not exceed the total effective period of imprisonment that could be imposed if the court had imposed a separate term of imprisonment for each of them."

6. The summary of facts reveal that there was preplanning. I would consider this as an aggravating factor that is common to both of you.

Sentence of the first accused

7. You are 18 years old. In addition to the fact that you have entered an early guilty plea, I would take into account the following as your mitigating factors;
- a) You are a first offender;
 - b) You are remorseful;
 - c) Stolen items were recovered; and
 - d) You have cooperated with the police.
8. I select 06 years as the starting point of your aggregate sentence. I would add 01 year to your sentence in view of the aggravating factor I have identified above. I would deduct 03 years in view of the above mitigating factors. Now your sentence is an imprisonment term of 4 years. In view of your early guilty plea through which you have saved this court's time and resources, you will be given a discount of one-third. Accordingly, your final aggregate sentence is an imprisonment term of 02 years and

08 months. The non-parole period I would fix in view of the provisions of section 18 of the Sentencing and Penalties Act would be 02 years.

9. Given that you are a young first offender, I consider it appropriate to partially suspend your sentence in terms of section 26(1) of the Sentencing and Penalties Act. I order that you serve the first 05 months of your sentence forthwith and the remaining period of 02 years and 03 months is suspended for 5 years.
10. It is submitted that you have been in custody in view of this matter since 23/05/18. The time you have spent in custody shall be regarded as a period of imprisonment already served by you in terms of section 24 of the Sentencing and Penalties Act. I hold that the period to be regarded as served should be 05 months and 03 weeks.
11. Given the period you have spent in custody, the time you should serve before your sentence is to be suspended is regarded as served. Therefore, you shall be released forthwith.

Sentence of the second accused


12. You are 19 years old. You are married and you have a 3 months old daughter. In addition to the fact that you have entered an early guilty plea, I would consider the following as your mitigating factors;
 - a) You are a first offender;
 - b) You are remorseful;
 - c) Stolen items were recovered; and
 - d) You have cooperated with the police.
13. I select 06 years as the starting point of your aggregate sentence. I would add 01 year to your sentence in view of the aggravating factor I have identified above. I would

deduct 03 years in view of the above mitigating factors. Now your sentence is an imprisonment term of 04 years. In view of your early guilty plea through which you have saved this court's time and resources, you will be given a discount of one-third. Accordingly, your final aggregate sentence is an imprisonment term of 02 years and 08 months. The non-parole period I would fix in view of the provisions of section 18 of the Sentencing and Penalties Act would be 02 years.

14. Given that you are a young first offender, I consider it appropriate to partially suspend your sentence in terms of section 26(1) of the Sentencing and Penalties Act. I order that you serve the first 05 months of your sentence forthwith and the remaining period of 02 years and 03 months is suspended for 5 years.
15. It is submitted that you have been in custody in view of this matter since 23/05/18. The time you have spent in custody shall be regarded as a period of imprisonment already served by you in terms of section 24 of the Sentencing and Penalties Act. I hold that the period to be regarded as served should be 05 months and 03 weeks.
16. Given the period you have spent in custody, the time you should serve before your sentence is to be suspended is regarded as served. Therefore, you shall be released forthwith.
17. In summary, each accused is sentenced to an imprisonment term of 02 years and 08 months with a non-parole period of 02 years. First 05 months of the sentence to be served forthwith and the remaining period of 02 years and 03 months is suspended for 05 years. The term to be served before the sentence is suspended is deemed to have been served in view of the period spent in custody.
18. The court clerk will explain you the effects of a suspended sentence.

19. Thirty (30) days to appeal to the Court of Appeal.




Vincent S. Perera
JUDGE

Solicitors:

Office of the Director of Public Prosecutions for State.
Legal Aid Commission for both Accused.