

IN THE HIGH COURT OF FIJI
AT SUVA
CRIMINAL JURISDICTION

CRIMINAL CASE NO: HAC. 187 of 2018

BETWEEN:

STATE

PROSECUTION

AND:

PENI KAUYACA

ACCUSED PERSON

Counsel:

Ms. M. Chowdhury for State
Ms. L. David for Accused

Sentence:

15th June 2018

S E N T E N C E

1. Mr Peni Kauyaca, you are charged with one count of Aggravated Burglary, contrary to Section 313 (1) (a) of the Crimes Act, which carries a maximum sentence of seventeen years imprisonment, and one count of Theft, contrary to Section 291 (1) of the Crimes Act, which carries a maximum sentence of ten years imprisonment. The particulars of the offences are that:

***PENI KAUYACA** is charged with the following offences:*

COUNT ONE

Statement of Offence

AGGRAVATED BURGLARY: *Contrary to Section 313 (1) (a) of the Crimes Act 2009.*

Particulars of Offence

PENI KAUYACA together with another on the 30th day of March 2018 at Nasinu, in the Central Division, broke and entered into the dwelling house of NOA NAEQE as trespassers with intent to commit theft.

SECOND COUNT

Statement of Offence

THEFT: *Contrary to Section 291 (1) of the Crimes Act 2009.*

Particulars of Offence

PENI KAUYACA together with another on the 30th day of March, 2018 at Nasinu, in the Central Division, dishonestly appropriated (stole), 1x wrist watch valued at \$237.00 and 1x box of jewellery valued at \$100, all to the total value of \$337.00, the properties of NOA NAEQE with the intention of permanently depriving him of the said properties.

2. You pleaded guilty for these two counts on the 28th of May 2018, before Justice Goundar. You reaffirmed your plea of guilty before me on the 12th of June 2018. Satisfied by the fact that you have fully comprehended the legal effect of your plea and your plea was voluntary and free from influence, I convicted you for each of these two counts.
3. According to the summary of fact, which you admitted in open Court, that you with another accomplice, have broken into the house of Mr. Noa Naeqe on the 30th of March 2018, while the occupants were away on the family vacation. You had entered into the house by removing some louver blades from the sitting room window of the house. You and your accomplice had then stolen one wrist watch valued at \$237 and one box of jewellery valued at \$100 therein.
4. The tariff for the offence of Aggravated Burglary is between 18 months to 3 years. (State v Drose - Sentence [2017] FJHC 205; HAC325.2015 (28 February 2017) State v Seru - Sentence [2015] FJHC 528; HAC426.2012 (6 July 2015).

5. The tariff for the offence of Theft has been stipulated in Ratusili v State [2012] FJHC 1249; HAA011.2012 (1 August 2012), where Justice Madigan held that:
- i) For a first offence of simple theft the sentencing range should be between 2 and 9 months.*
 - ii) Any subsequent offence should attract a penalty of at least 9 months.*
 - iii) Theft of large sums of money and thefts in breach of trust, whether first offence or not can attract sentences of up to three years*
 - iv) Regard should be had to the nature of the relationship between offender and victim.*
 - v) Planned thefts will attract greater sentences than opportunistic thefts.*
6. This is a breaking of a residential property and stealing therein in the night, while the owners were away. The crimes in this nature, which are targeting the residential properties, are undoubtedly affecting the entire community as it could instill fear and insecurity among the inhabitants. Crimes of this nature are prevalent and have forced the community to live behind burglars bars and grills even they live in their own houses. Hence, I find this is a serious crime and offenders of such crimes must be dealt with harsh and immediate custodial sentences.
7. Having considered the reasons discussed above and Section 4 (1) of the Sentencing and Penalties Act, the main purpose of this sentence is founded on the principle of deterrence and protection of the community. I am mindful of the principle of rehabilitation; however, it is my opinion that the need of deterrence outweighs the principle of rehabilitation unless there are some compelling circumstances.
8. Both of these offences are founded on the same series of offending of same and similar characters. Therefore, I find it is appropriate to impose an aggregate sentence pursuant to Section 17 of the Sentencing and Penalties Act.
9. According to summary of fact, it is revealed that you had observed the house of the Complainant for some time and found that the occupants were away on that day.

Therefore, I find that you have planned this crime and executed it when you found an appropriate opportunity. Hence, I find the degree of culpability and responsibility in this offending is substantially high.

10. Any home invasions and stealing therein have adverse impact on the occupants of the house. It is not mere physical invasion into the house, but it is an invasion of a person's space of freedom. Accordingly, I find that the impact on the victim is significant in this kind of offending.
11. Apart from above discussed factors, I do not find any additional aggravating circumstances of this crime.
12. You have pleaded guilty at the first available opportunity. Moreover, you have admitted that you committed this crime during your caution interview and maintained that position until you pleaded guilty, which demonstrates your remorse and repent in committing this crime. Therefore, you are entitled for a substantial discount for your early plea of guilty and remorse.
13. It is submitted that you are a first offender and 21 years old. Therefore, you are entitled for substantive discount for your previous good character.
14. Having taken in to consideration the seriousness, the level of your culpability and responsibility in this offending and the impact on the victim, I select thirty six (36) months interim imprisonment period.
15. Taking into consideration your previous good character, young age and family circumstances, I reduce your sentence by eight (8) months, making it to twenty eight (28) months imprisonment period.
16. I further give you a discount of ten (10) months for your early plea of guilty, making your final sentence as eighteen (18) months of imprisonment period.

17. I am mindful of the fact that a sentence below 3 years could be suspended by this Court pursuant to Section 26 of the Sentencing and Penalties Act.
18. However, taken into consideration the seriousness of this crime, I do not find there is an appropriate reason to suspend this sentence. The learned counsel for the accused in her submission in mitigation strongly submitted that you are a young first offender, therefore you should not be given a custodial sentence.
19. Justice Nawana in State **Prosecution v Tilalevu [2010] FJHC 258; HAC081.2010 (20 July 2010)**, held that:

"I might add that the imposition of suspended terms on first offenders would infect the society with a situation - which I propose to invent as 'First Offender Syndrome' - where people would tempt to commit serious offences once in life under the firm belief that they would not get imprisonment in custody as they are first offenders. The resultant position is that the society is pervaded with crimes. Court must unreservedly guard itself against such a phenomenon, which is a near certainty if suspended terms are imposed on first offenders as a rule."

20. I concur with his Lordship Nawana's observation as there is no sentencing rule to impose a suspended sentence for each and every first offenders. I am mindful that you are a young first offender. However, the seriousness of this offence demands the court to consider the protection of the community. Therefore, the purpose of this sentence, that is to deter offenders or other persons from committing offences of the same or similar nature and protection of community have out-weighted the purpose of rehabilitation. Accordingly, I do not find any appropriate reasons to suspend this sentence.
21. Having considered the seriousness of this crime, the purpose of this sentence, your age, family circumstances and opportunities for rehabilitation, I find 8 months of non-parole period would serve the purpose of this sentence. Hence, you are not eligible for any

parole for a period of 8 months pursuant to Section 18 (1) of the Sentencing and Penalties Act.

Head Sentence

22. Accordingly, I sentence you for a **period of eighteen (18) months imprisonment** for these offences as charged. Moreover, you are not eligible for any parole for a period of **eight (8) months** pursuant to Section 18 of the Sentencing and Penalties Act.

Actual Period of Sentence

23. You have been in remand custody for this case for a period of nine (9) days as you were not granted bail by the Court. In pursuant of Section 24 of the Sentencing and Penalties Act, I consider the period of one (1) month as a period of imprisonment that have already been served by you.
24. Accordingly your actual sentencing period is **seventeen (17) months** of imprisonment period, with **seven (7) months** of non-parole period.
25. Thirty (30) days to appeal to the Fiji Court of Appeal.




R.D.R.T. Rajasinghe
Judge

At Suva
15th June 2018

Solicitors

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