

IN THE HIGH COURT OF FIJI
AT SUVA
CRIMINAL JURISDICTION

CRIMINAL CASE NO: HAC. 75 of 2018

BETWEEN: STATE

PROSECUTION

AND: AKUILA BIU

ACCUSED PERSON

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

Punishment: 15th June 2018

PUNISHMENT

1. 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:

AKUILA BIU is charged with the following offences:

COUNT 1

Statement of Offence

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

Particulars of Offence

AKUILA BIU together with another on 31st January, 2018 at Nasinu in the Central Division, broke and entered into the storage room of REAPI KAWANIKAILEQUTU as trespassers with intent to commit theft.

COUNT 2

Statement of Offence

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

Particulars of Offence

AKUILA together with another on 31st January, 2018 at Nasinu in the Central Division, dishonestly appropriated (stole) 1 x Black and Decker vacuum cleaner and car wash chemicals, all to the total value of \$409.00, the properties of REAPI KAWANIKAILEQUTU with the intention of permanently depriving her of the said properties.

2. You are a juvenile during the time material for these offences. Hence, I now proceed to impose the punishment for these two offences as follows.
3. You pleaded guilty for these two counts on the 13th of June 2018 in the presence of your counsel. 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 now find you guilty for these two offences as charged.
4. According to the summary of fact, which you admitted in open Court, that you with another accomplice have broken into the storage room of Reapi Kawanikailequtu by removing the door of the storage room. Having entered into the room, you have stolen a Black and Decker Vacuum cleaner and carwash chemicals therein. The values of the stolen properties are is \$409.00.

5. 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).
6. 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.*
7. The crimes in this nature are undoubtedly affecting the entire community as it could instill fear and insecurity among the inhabitants. Hence, I find this is a serious crime.
8. Section 30 (2) of the Juvenile Act does not permit the Court to imprison a young person between fourteen to eighteen years old for an offence. However, if the Court certifies that the young person is of an unruly character that he cannot be detained in an approved institution or that he is of a depraved character and not suitable to be detained, the Court could imprison a young person for a period up to two years pursuant to Section 30 (3) of the Juvenile Act. Section 30 of Juvenile Act states that:
 - i) *No child shall be ordered to be imprisoned for any offence.*
 - ii) *No young person shall be ordered to be imprisoned for an offence, or to be committed to prison in default of payment of a fine, damages or costs, unless the court certifies that he is of so unruly a character that he cannot be detained in an approved institution or that he is of so depraved a character that he is not a fit person to be so detained.*

iii) A young person shall not be ordered to be imprisoned for more than two years for any offence.

9. You have admitted that you have committed these offences during your caution interview and maintained that position by pleading guilty for these offences at the first available opportunity that reflects your remorsefulness in committing these offences.
10. You are presently serving a term of three months imprisonment period for an offence for which you have been found guilty by the Juvenile Magistrate's Court of Suva.
11. Having considered the seriousness of this offence, nature of this offending, the plea of guilty and the remorsefulness shown by the juvenile offender, I punish you for a period of 3 months imprisonment period.
12. Having taken into consideration your previous punishment, I am of the view that you are the person with unruly character. Therefore, I certify you as a person of unruly character pursuant to Section 30 (2) of the Juvenile Act. In view of these reasons, I do not find any appropriate reasons to suspend your sentence.
13. I accordingly punish you a period of three months imprisonment for these two offences as charged in the information, to be served at the Juvenile Boys' Centre.
14. Thirty 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.