

IN THE HIGH COURT OF FIJI
AT SUVA
CRIMINAL JURISDICTION

CRIMINAL CASE NO: HAC. 206 of 2018

BETWEEN:

STATE

PROSECUTION

AND:

JOSAIA NAWALU

ACCUSED PERSON

Counsel:

Mr. E. Samisoni for State
Ms. T. Kean for Accused

Sentence:

06th July 2018

S E N T E N C E

1. Mr. Josaia Nawalu, you stand convicted for one count of Aggravated Burglary, contrary to Section 313 (1) (a) of the Crimes Act, which carries a maximum penalty of seventeen (17) years imprisonment and one count of Arson, contrary to Section 362 (a) of the Crimes Act, which carries a maximum penalty of life imprisonment. The particulars of the offences are that:

COUNT 1

Statement of Offence

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

Particulars of Offence

JOSAIA NAWALU *with another and in the company of each other, on the 13th day of March, 2017 at Wailada, Lami in the Central Division,*

*entered as trespassers into **OCEAN BOUNTIFUL LIMITED** with the intent to commit theft from that property.*

COUNT 2

Statement of Offence

ARSON: *Contrary to Section 362 (a) of the Crimes Act 2009*

Particulars of Offence

***JOSALA NAWALU** with another, on the 13th day of March, 2017 at Wailada, Lami in the Central Division, wilfully and unlawfully set fire to the **OCEAN BOUNTIFUL LIMITED** building.*

2. You pleaded guilty for these two counts on the 3rd of July 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, you have entered into the building of Ocean Bountiful Limited in the night of 8th of April 2018, at around 2 a.m. to 4 a.m. with another. You had entered into the building with the intention of stealing therein. Both of you had attempted to open the safe of office but failed. You have failed to find any valuable items to steal. Hence, you have set fire to the building.
4. The offence of Aggravated Burglary is a serious offence. The maximum penalty for this offence is seventeen years of imprisonment. Burglars invade into the space of others freedom in order to steal from them. Hence, the offence of burglary is one of the dangerous forms of property crime as offender can create the fear and insecurity among the people.
5. Arson is a serious offence as well, which carries a maximum penalty of life imprisonment. Burning down of any commercial property could adversely affect the occupants or the owners of those properties

6. These two 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.
7. 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).
8. The Fiji Court of Appeal in Damodar Naidu and Others (1978 FLR 93), has imposed sentences of seven (7) and ten (10) years for burning down of a number of shops.
9. Justice Shameem in Lagi v The State [2004] FJHC 69; HAA0004J.2004S (12 March 2004) found that the tariff for the offence of arson is between 2 - 4 years, where her Ladyship held that:

“In this case the Respondent appears to have ensured that the house was empty when he lit the fire. However the fact that he accompanied a group of men who threatened the occupants, the fact that the arson was motivated by revenge and the serious consequences of the arson on the victims who were forced to leave the village they called home, called for a sentence within the 2-4 year range. With a starting point of 3 years imprisonment, reduction for the previous good character and other mitigation, and increase for the aggravating factors I have outlined, I see nothing wrong in principle, with a 3 year term. Arson is a most serious offence with a maximum sentence of life imprisonment. A family’s home and belongings were destroyed in the fire. The children of the family may never recover for the trauma of what they saw on the night of the 19th of January 1999.”

10. The Fiji Court of Appeal in Lesu v State [2014] FJCA 214; AAU58.2011 (5 December 2014) held that:

"Arson is an extremely serious offence and the maximum penalty is life imprisonment. Despite the serious penalty, as mentioned earlier, the Courts in Fiji for considered reasons have placed the tariff for arson between 2 years and 4 years imprisonment."

11. Justice Temo in State v Raralevu - [2015] FJHC 374; HAC026.2013S (22 May 2015) has sentenced the accused for a period of four (4) years for burning down the house of his wife, where his Lordship observed that:

"Arson", as an offence, is viewed seriously by the law makers of this country. It carried a maximum penalty of life imprisonment. Previous case laws had set a tariff between 2 to 4 years imprisonment (see Kelemedi Lagi & Others v State, Criminal Appeal Case No. HAA 0004 of 2004S, High Court, Suva, which was endorsed by the Fiji Court of Appeal in Niko Lesu and Sunia Vosataki v State, Criminal Appeal No. AAU 058 of 2011). However, the Fiji Court of Appeal, in Damodar Naidu & Another v Reginam, Fiji Law Report, Vol 24, 1978, pages 93 to 106, approved a sentence of 7 years imprisonment for accused no. 1 and 10 years imprisonment for accused no. 2, for burning down a number of shops in Rakiraki Town, in May 1977. Of course, the final sentence will depend on the mitigation and aggravating factors."

12. Justice Madigan in State v Seru [2016] FJHC 841; HAC32.2015 (21 September 2016) found that:

"There is no predetermined tariff for the crime of attempted arson but the accepted sentences for arson itself range from 2 years to 10 years. Two years has been held to be appropriate where there is no danger to human life and 4 years where there is such a danger. These are sentences passed for a crime with the maximum penalty of life imprisonment, and there is no reason why a tariff for attempted arson should be more."

13. Apart from the facts relevant to the main elements of the offences, the summary of fact does not disclose any aggravating circumstance of this offending. The estimated value of the damage is \$55,000, which is substantially a high loss. I take that into consideration as aggravating factor.
14. You are a first offender and 19 years old. Hence, I give you a substantial discount for your previous good character.
15. You pleaded guilty for these offences at the first available opportunity, which demonstrate your remorse and repent in committing this crime. Hence, I give you one-third discount for your early plea of guilty and remorse.
16. Having taken into consideration the above discussed factors, I sentence you to aggregate sentence of three (3) years imprisonment for these two counts as charged.
17. In view of the seriousness of this offence, I do not find any appropriate reasons to suspend your sentence.
18. Having considered your age, family circumstances and opportunities for rehabilitation, I find a non-parole period of eighteen (18) months would serve the purpose of the Sentence.

Head Sentence

19. Accordingly, I sentence you for a period of **three (3) years** imprisonment for these offences as charged. I further order that you are not entitled for any parole for a period of **eighteen (18) months** pursuant to Section 18 (1) of the Sentencing and Penalties Act.

Actual Period of Sentence of Mr. Josaia Nawalu

20. You have been in remand custody for this case for a period of sixteen (16) 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 month (1) month as the period of imprisonment that have already been served by you.

21. Accordingly, your actual sentencing period is **two (2) years and eleven (11) months** of imprisonment period, with **seventeen (17) months** of non-parole period.
22. Thirty (30) days to appeal to the Fiji Court of Appeal.




R.D.R.T. Rajasinghe
Judge

At Suva
06th July 2018

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