

IN THE HIGH COURT OF FIJI
AT LABASA
[APPELLATE JURISDICTION]

CRIMINAL APPEAL CASE NO. HAA21 OF 2017

(Magistrates' Court Case No. 615 of 2015)

BETWEEN: PELAME RAQIO

APPELLANT

AND: THE STATE

RESPONDENT

Counsel: Appellant in Person
Ms A Vavadakua for the Respondent

Date of Hearing: 8 January 2018

Date of Judgment: 16 January 2018

JUDGMENT

- [1] On 25 September 2017, the Magistrates' Court sentenced the appellant to 14 months' imprisonment for burglary and 10 months' imprisonment for theft, after he pleaded guilty to the charges. Since the charges arose from the same transaction, the sentences were made concurrent. This is a timely appeal against sentence only on the ground that the learned Magistrate failed to give any discount for the time that the appellant spent in custody while on remand.
- [2] The facts were that on the night of 16 October 2015, the appellant removed the window mesh and louver blades to gain entry into the victim's home while he was asleep. After gaining entry, the appellant went into the shop that the victim was

operating from the same premises. He stole groceries and two mobile phones, all to the total value of \$1,009.00. Only a mobile phone was recovered. The victim was 70 years old and vulnerable.

- [3] On 26 November 2015, the appellant was charged and produced before the Magistrates' Court. He remained in custody while on remand until 14 December 2015, when he was released on conditional bail.
- [4] On 1 April 2016, the appellant absconded bail and failed to appear in court. On 2 June 2017, the appellant was arrested and remanded in custody. He was also charged with absconding bail. He pleaded guilty to the absconding charge, and on 8 August 2017, was sentenced to 2 months 1 week imprisonment (Criminal Case No. 282/17). In sentencing the appellant for absconding, the learned Magistrate reduced the sentence by 1 month 3 weeks to reflect the time the appellant spent in custody while on remand.
- [5] On 20 September 2017, the appellant pleaded guilty to the burglary and theft charges. On 25 September 2017, he was sentenced to a total effective sentence of 14 months' imprisonment. Since this later sentence was not directed to be served consecutively with the sentence imposed on 8 August 2017, by default the sentence was made concurrent (s 22 of the Sentencing and Penalties Act 2009).
- [6] Section 24 of the Sentencing and Penalties Act 2009 states that in sentencing an offender the courts must consider any period that the offender had spent in custody while on remand. No precise formula is required for discounting for the remand period (*Vasuca v State* [2015] FJCA 65; AAU011.2011 (28 May 2015)). The principle is that allowance should be made for any significant period that the offender spent in custody while on remand (*Sowane v State* [2016] FJSC 8; CAV0038.2015 (21 April 2016)).
- [7] The appellant's remand period was not significant. Initially, he spent less than three weeks in custody before he was granted bail. When he was re-arrested for absconding bail and remanded in custody, that remand period was discounted for in the sentence for absconding bail. From 8 August 2017, the appellant became a serving prisoner for

absconding bail. When he was sentenced in the present case, he was a serving prisoner.

- [8] The appellant committed the offences in the present case during the operational period of a suspended sentence for a similar offence. He is fortunate that he is not charged with the offence of breaching a suspended sentence. The total effective sentence of 14 months' imprisonment for burglary and theft is within the acceptable range for such offences (*Vuli v State* [2017] FJHC 17; HAA53.2016 (23 January 2017)). The victim was vulnerable due to his old age and the appellant entered his premises while drunk. There is no substantial miscarriage of justice caused to the appellant by the learned Magistrate's failure to make an allowance for less than 3 weeks that the appellant had spent in custody while on remand.

Order of the Court:

- [9] Appeal dismissed.



A handwritten signature in blue ink, appearing to read 'Daniel Goundar', is written above a dotted line.

Hon. Mr Justice Daniel Goundar

Solicitors:

Appellant in Person

Office of the Director of Public Prosecutions for the Respondent