

IN THE HIGH COURT OF FIJI AT SUVA

CASE NO: HAC. 33 of 2018

[CRIMINAL JURISDICTION]

STATE

V

LUSIANA WATI

Counsel : Ms. B. Kantharia for State
Ms. L. Ratidara for Accused

Hearing on : 13th August 2018

Sentence on : 28th September 2018

SENTENCE

1. Lusiana Wati, you have pleaded guilty to the two offences produced below. After considering the summary of facts you have admitted and your cautioned interview statement, this court was satisfied that the pleas you have entered were unequivocal. You were accordingly convicted as charged. The charges are as follows;

FIRST COUNT

Statement of Offence

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

Particulars of Offence

LUSIANA WATI with another between 17th day of December, 2017 and 18th day of December, 2017 at Samabula in the Central Division, entered into the property of Aminiasi Vukiduadua as a trespasser with intent to

commit theft.

SECOND COUNT

Statement of Offence

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

Particulars of Offence

LUSIANA WATI with another between 17th day of December, 2017 and 18th day of December, 2017 at Samabula in the Central Division, dishonestly appropriated 1 x 32inch Akita flat screen valued at \$250.00, 1 x Panasonic DVD deck valued at \$250.00, 1 x Panasonic Home Theatre System valued at \$250.00, all to the total value of \$750.00, the property of Aminiasi Vukiduadua with the intention of permanently depriving Aminiasi Vukiduadua of the said properties.

2. You have admitted the following summary of facts;
 1. *The complainant in this matter is Aminiasi Vukiduadua, 48 years old, caretaker of Lot 66 Kikau Street, Samabula.*
 2. *The accused is Lusiana Wati, 23 years old, unemployed of Top Flat, French Bakery, Samabula.*
 3. *There is no relationship between the accused and the complainant; they got to know each other through a friend.*
 4. *On 17/12/17 at about 12.00pm the complainant securely locked his flat at 66 Kikau Street, Samabula and went to attend a meeting at Gaggi Road.*
 5. *The complainant returned home at about 2.00am on 18/12/17 and found the lights in his house switched off and as he proceeded into the house he found that the following items were missing from his bedroom and sitting room:-*
 - (a) *1xAkita brand 32"TV Screen valued at \$250.00;*
 - (b) *1x Panasonic DVD Deck valued at \$250.00;*
 - (c) *1xPanasonic home theatre system valued at \$250.00.**All to the total value of \$750.00*
 6. *On further checking his house, the complainant found that 3 louver blades were missing from his bedroom windows which were not grilled.*

7. *The complainant then reported the matter at the Samabula Police Station.*

Count 1: Aggravated Burglary

8. *Lusiana Wati – in her record of interview stated that she together with another on 17/12/17 after 7pm went to the complainants house and called out his name but there was no response so went into his compound to his flat and pepped from the window and found that the complainant was not at home – (Q. & Ans. – 47 to 49).*
9. *The accused then stated that her accomplice told for them to break into the complainant's flat by removing the louver blade – (Q. & Ans. – 57).*
10. *The accused further stated that she stood in front of the flat whilst her accomplice went to the back to remove the 3 louver blades and entered the flat (Q. & Ans. 58 to 62).*

Count 2: Theft

11. *On the above mentioned date and time, the accused together with her accomplice stole the following items from the complainant's flat, the property of Aminiasi Vukiduadua:*
- (a) 1xAkita brand 32"TV Screen valued at \$250.00;*
 - (b) 1x Panasonic DVD Deck valued at \$250.00;*
 - (c) 1xPanasonic home theatre system valued at \$250.00.*
- All to the total value of \$750.00.*
12. *The accused stated in her caution interview statement that her accomplice pulled out the flat screen from inside the complainant's flat through the window then he brought it to the front where she was standing – (Q. & Ans. – 63).*
13. *Accused stated that they thereafter saw one DVD player with 6 small speakers placed in the shed in front of the complainants flat and they picked up an empty flour bag which was lying in the shed and put the flat screen and the DVD player with the six speakers inside the bag (Q. & Ans. – 64 & 65).*
14. *The accused then carried the DVD player with the six speakers whilst her accomplice carried the flat screen and they both walked from Kikau Street towards Waimanu*

- Road where they stopped a taxi and loaded the items and went to Nausori Town – Q. & Ans. – 66 to 68).
15. The accused and her accomplice went straight to Nausori old bus stand where they met an i-Taukei woman who was running a restaurant there and asked her if she wanted to buy the abovementioned items (Q. & Ans. – 70).
 16. The i-Taukei woman agreed to buy the items for \$300.00 (Q. & Ans. – 72).
 17. The stolen items were recovered from one Sova Mataitoga who stated that she was approached by one i-Taukei girl (the accused) and a transgender who asked her if she wanted to buy an Akita flat screen and Panasonic home theatre.
 18. Sova Mataitoga asked them how much they were selling the items for and they stated \$450.00.
 19. Sova Mataitoga further asked them where they had bought the items from and she stated that they had bought new items and wanted to sell these items.
 20. Sova Mataitoga then gave the i-Taukei girl (the accused), \$300.00 cash (\$100.00-notes) and they gave her the flat screen and home theatre which she took it home and had still not used same.
 21. On 16/1/18 Sova Mataitoga was at her shop when she saw the i-Taukei girl – (the accused) that sold her the flat screen escorted by the police and then she came to know that the items sold to her were stolen.
 22. The accused and her accomplice had stolen the above listed items with intent to permanently deprive the complainant – Aminiasi Vukiduadua of his properties.
 23. The stolen items were later identified by the complainant as the property belonging to him and having been stolen during the break-in at his flat.
 24. The stolen items 1 x Akita brand 32"TV valued at \$250.00, 1 x Panasonic DVD Deck valued at \$250.00 and 1 x Panasonic home theatre system valued at \$250.00 are exhibited under the RCE No. 1105/18.
 25. The accused is charged and has pleaded guilty to one count of Aggravated Burglary contrary to section 313(1)(a) and one count of Theft contrary to 291(1) of the Crimes Act 2009.
 26. The accused has no previous convictions; copy of her previous conviction is annexed

hereto marked "A".

27. Copy of the accused's record of interview is annexed hereto marked "B".

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 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. According to the summary of facts, this was a crime of opportunity and the said facts does not disclose any aggravating factors.

7. Your counsel had submitted that you are 24 years old and you come from a broken family. You have left school when you were in Form 5 and thereafter you fell into bad company.
8. In your mitigation, apart from the fact that you have pleaded guilty to the charges, it is submitted that;
 - a) You are a first offender;
 - b) All the stolen items were recovered; and
 - c) You have cooperated with the police.
9. I would select 6 years as the starting point of your aggregate sentence. I would deduct 2 years in view of the above mitigating factors. Now your sentence is an imprisonment term of 4 years.
10. You had escaped twice while you were in custody for this matter. You were charged for the above offences before the Magistrate Court on 18/01/18. The case was first called before the High Court on 01/02/18 and the Information and the disclosures were filed on 22/02/18. On that day the case was fixed on 08/03/18 for plea. Therefore, you decided to escape and then abscond knowing very well that your case is fixed for your plea to be taken. You were produced in court on 13/07/18 after you were rearrested and you pleaded guilty to the offences on 30/07/18.
11. Given the above circumstances, I am not convinced that your plea of guilty can be regarded as an early guilty plea. This conduct of yours reflects lack of remorse and your disrespect towards the justice system. I would therefore grant you a discount of one-fourth in view of your guilty plea. Accordingly, your final aggregate sentence is an imprisonment term of 3 years.
12. The non-parole period I would fix in view of the provisions of section 18 of the Sentencing and Penalties Act would be 18 months.

13. Given your conduct of escaping from lawful custody, not once but twice, I consider it inappropriate to suspend your sentence. Given the said conduct and your personal circumstances, it will be in your best interest to undergo the rehabilitation programmes conducted by the Fiji Prisons and Corrections Service.
14. I note that you have been in custody for this matter for a period of 3 months and 21 days. The period you have spent in custody shall be regarded as a term of imprisonment already served by you in terms of the provisions of section 24 of the Sentencing and Penalties Act. I order that the period to be regarded as served should be 4 months.
15. In the result, you are sentenced to an imprisonment term of 03 years with a non-parole period of 18 months. Considering the time spent in custody, the time remaining to be served is as follows;

Head Sentence - 02 years and 08 months

Non-parole period - 01 year and 02 months

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



A handwritten signature in blue ink, appearing to read "Vinsent S. Perera".

Vinsent S. Perera

JUDGE

Solicitors;

Office of the Director of Public Prosecutions for State.

Legal Aid Commission for Accused.