

IN THE HIGH COURT OF FIJI AT SUVA

CASE NO: HAC. 260 of 2019

[CRIMINAL JURISDICTION]

STATE

V

1. ETUATE TOKO-I-TAMANA

2. DAWN TUICAKE

Counsel : Ms. S. Tivao for State
Ms. P. Natika for the 1st Accused
Ms. A. Singh for the 2nd Accused

Date of Sentence : 22 November 2019

SENTENCE

1. Etuate Toko-I-Tamana and Dawn Tuicake, you have pleaded guilty to the charges produced below and were convicted as charged accordingly;

FIRST COUNT

Statement of Offence

AGGRAVATED BURGLARY: contrary to section 313 (1) (a) of the Crimes Act 2009.

Particulars of Offence

ETUATE TOKO-I-TAMANA and **DAWN TUICAKE**, in the company of each other, between the 14th day of May 2019 and the 15th day of May 2019, at Lau in the Eastern Division, entered into the property of **SUNIA QILAI**, 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

ETUATE TOKO-I-TAMANA and DAWN TUICAKE between the 14th day of May 2019 and the 15th day of May 2019, at Lau in the Eastern Division, dishonestly appropriated \$300.00 cash, the property of SUNIA QILAI with the intention of permanently depriving SUNIA QILAI of the said property.

2. You have admitted the following summary of facts;

Accused 1 [A1]

A1 in this matter is one, Etuwate Toko-I-Tamana, 18 years old, of Yadrana, Lakeba, Lau.

Accused 2 (A2)

A2 in this matter is one, Dawn Tuicake, 22 years old, Student, of Tubou, Lakeba, Lau.

Complainant [PW1]

The complainant in this matter is one, Sunia Qilai, 50 years old, Businessman, of Yadrana, Lakeba, Lau.

Prosecution Witness 2 [PW2]:

PW2 in this matter is one, Kanumi Isireli, 46 years old, Domestic Duties, of Yadrana, Lakeba, Lau.

Prosecution Witness 3 [PW3]: Interviewing Officer for A1 & A2

PW3 in this matter is one, PC 4646 Tevita Ledua.

Prosecution Witness 4 [PW4]: Witnessing Officer for A1

PW4 in this matter is one, SC 4249 Vulaca.

Prosecution Witness 5 [PW5]: Witnessing Officer for A2

PW5 in this matter is one, SC 4296 Vulaca.

- 1) Both the accused persons are charged with and have voluntarily pleaded guilty to one count of Aggravated Burglary, contrary to section 291 (1) of the Crimes Act 2009.

- 2) *The complainant operates a small canteen store selling goods in his village at Yadrana, Lakeba, Lau. On the 17th day of May 2019, the complainant had securely locked his store after business hours. Prior to closing his store, the complainant had kept his income from selling kerosene in a red container and left it on the canteen shelf.*
- 3) *The very next morning, which is on the 15th day of May 2019, as the complainant opened his canteen to serve a customer he noticed that part of his canteen's wall had been forcefully broken. The complainant then noticed his container with a red lid containing \$300.00 cash was stolen. The complainant then reported the matter to police.*
- 4) *PW2 who is the aunty of A1 stated that she recalls on the 15th day of May 2019 at about 3.00 am, A1 and A2 were talking to her son and they both sounded drunk. Around mid-day, after receiving information, police officers searched PW2's house. After the police officers had left, PW2 asked her son to assist in searching for the stolen container which contained the cash. Upon searching the ceiling, PW2's son found a container with a red lid and some money inside the container. The same was given to the village headman and then seized by the police.*
- 5) *\$120.00 cash was recovered in this case from which \$65.00 was voluntarily handed over to the police by A2.*
- 6) *A1 and A2 were subsequently arrested and interviewed under caution.*
- 7) *A1 and A2 in their respective record of interviews had made full admissions to committing the offences they are charged with.*
- 8) *A1 in this record of interview stated that on the 14th of May 2019 he was consuming alcohol with others including A2 (Q&A 17-19). A1 stated that they had finished consuming alcohol around 2am whereby the group then went their separate ways. However, A1 admitted that he and A2 together planned to break-into and steal from the complainant's store (Q&A 28-30). A1 further admitted that he and A2 then jointly removed three pieces of timber from the walls of the complainant's shop (Q&A 31-34). A1 then stated that he then entered the complainants store with the intention to steal (Q&A 35-37). A1 admitted that he stole money from the complainant's shop which was in a "bottle" (Q&A 38-41). A1 also admitted that apart from the \$120.00 that was recovered, he had given the rest of the money to A2 (Q&A 42-43). A1 admitted that he had committed the offence because he wanted money (Q&A 49).*

- 9) A2 in his record of interview stated that on the 14th day of May 2019 he was consuming alcohol with others including A1 (Q&A 21-23). A2 admitted that after they had finished consuming alcohol around 1 am, A1 told him that the complainant would be sleeping and for both of them to break-into the complainants store (Q&A 26). A2 admitted that he and A1 then made their way to the complainants store and together they pulled out part of the store wall with their hands (Q&A 29-30). A2 admitted that A1 then went inside and stole a container of money (Q&A 31-33). Later, A2 admitted that he had put the stolen container of money at his aunt's house (PW2) (Q&A 35). A2 further admitted that apart from the \$120.00 that was recovered, he used \$40.00 to pay off his credit to a person named Manaini and \$25.00 he used to pay off his credit to a person named Temo (Q&A 34-37).
- 10) Both the accused persons had jointly planned to burgle the complainant's store with the intention to permanently deprive the complainant off his property as charged in the information.
- 11) Annexed hereto is the Record of Interview of A1, marked as "Annexed A".
- 12) Annexed hereto is the Record of Interview of A2, marked as "Annexure 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 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.

6. 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."

7. Etuate Toko-I-Tamana, you are 18 years old at the time of offending. You are said to be a farmer at Yadrana Village, Lakeba, Lau. You have studied up to class 8.
8. Dawn Tuicake, you were 23 years old at the time of offending. It is submitted that you left school in 2014 and you had resumed studies this year. You were said to have been a year 12 student in a school at Lakeba, Lau at the time you committed the offences relevant to this case.
9. According to the summary of facts you have committed the offences after a drinking session and there was premeditation. The fact that there was preplanning will be considered as an aggravating factor common to both of you.
10. In addition to the fact that you have entered an early guilty plea, I would consider the following as your mitigating factors;
- a) You are young first offenders;
 - b) You are remorseful;
 - c) The complainant has been fully restituted; and
 - d) You have cooperated with the police.
11. I would select 06 years as the starting point of your aggregate sentence. I would add 01 year in view of the aforementioned aggravating factor and I would deduct 03 years in view of the above mitigating factors. Now your sentence is an imprisonment term of 04 years.

12. In view of your early guilty plea, I would grant each one of you a discount of one-third. Accordingly, the final sentence is an imprisonment term of 02 years and 08 months.
13. I would fix your non-parole period at 18 months in terms of the provisions of section 18(1) of the Sentencing and Penalties Act. I have considered the circumstances of the offending and your personal circumstances in determining the non-parole period.
14. Each of you have spent about 05 months in custody. The time you have spent in custody shall be regarded as a period of imprisonment already served by you in terms of section 24 of the Sentencing and Penalties Act.
15. Section 24 of the Sentencing and the Penalties Decree reads thus;
"If an offender is sentenced to a term of imprisonment, any period of time during which the offender was held in custody prior to the trial of the matter or matters shall, unless a court otherwise orders, be regarded by the court as a period of imprisonment already served by the offender."
16. In the result, each of you are sentenced to an imprisonment term of 02 years and 08 months with a non-parole period of 18 months. Given the period you have spent in custody, the time remaining to be served is as follows;

Head sentence - 02 years and 03 months
Non-parole period -13 months
17. In order to promote your rehabilitation, and especially taking into account the fact that there has been full restitution, I have decided to suspend the remaining period of the sentence imposed on each one of you, for a period of 03 years.
18. The court clerk will explain you the effects of a suspended sentence.

19. Accordingly, you will be released today. Both of you are thoroughly warned and are hereby advised to hereafter abide by the laws of this country and lead a good life.
20. 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 the State
Legal Aid Commission for the 1st & 2nd Accused