

IN THE HIGH COURT OF FIJI AT SUVA

CASE NO: HAC. 201 of 2019

[CRIMINAL JURISDICTION]

STATE

V

1. WAISAKE RABUATOKA TOKADUADUA

2. SK (JUVENILE)

Counsel : Mr. E. Samisoni for State
Ms. L. David for the 1st Accused & the Juvenile

Date of Sentence : 25 November 2019

[The name of the juvenile offender is suppressed. Accordingly, the juvenile will be referred to as "SK". No newspaper report or radio broadcast of the proceedings shall reveal the name, address or school, or include any particulars calculated to lead to the identification of the said juvenile.]

SENTENCE

1. Waisake Rabuatoka Tokaduadua, you pleaded guilty to the charges produced below when you were arraigned 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

WAISAKE RABUATOKA TOKADUADUA and SK, with another, on the 18th day of May, 2019 at Lami in the Central Division, in the

company of each other, entered as trespassers into **RB PATEL SUPERMARKET - HARBOUR POINT**, with the intent to commit theft.

SECOND COUNT

Statement of Offence

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

Particulars of Offence

WAISAKE RABUATOKA TOKADUADUA and SK, with another, on the 18th day of May, 2019 at Lami in the Central Division, in the company of each other, dishonestly appropriated (stole) 3x 700ml bottles of Coruba rum, 2x 1 litre bottles of Bombay Sapphire gin, 1x 700ml bottle of Johnnie Walker whisky and 1x 700ml bottle of Smirnoff vodka, the property of **RB PATEL SUPERMARKET - HARBOUR POINT** with the intention of permanently depriving **RB PATEL SUPERMARKET - HARBOUR POINT** of the said property.

2. You have admitted the following summary of facts;

Accused: (A1) Waisake Rabuatoka Tokaduadua, 20 years old, student of Suvavou village, Lami.

Juvenile: (J1) SK, 17 years old, unemployed of Suvavou village, Lami. (Birth Certificate attached as Annexure 1).

Complainants: (PW1) Saula Roko, 32 years old, supervisor of RB Patel Supermarket - Lami.

(PW2) Torika Saumatua, 31 years old, IT personnel at RB Patel Supermarket - Lami.

(PW3) Jeremaia Vesikula, 28 years old, taxi driver at Tiko Kece Taxis.

(PW4) Jovilisi Seruvakula, 35 years old, taxi operator of Tiko Kece Taxis.

(PW5) Semi Niobalavu, 20 years old, USP student of Suvavou village, Lami.

1. On 18 May, 2019 at around 3am at the RB Complex at Harbour Point Lami, PW3 and PW4 were on duty at the Tiko Kece Taxi base there, when they saw two people at the RB Patel Supermarket main door. They saw one of the two standing on the shoulders of the other, opened some louvre blades and take out

something from RB Patel Supermarket. They then saw the two persons walk away towards the seawall holding something in their hands. They confirmed that these two people were both itaukei and that a third person was standing at a nearby tree as a lookout.

2. PW5 said that after 2am on date of the incident, he was walking with a friend to the Tiko Kece Taxi base at Harbour Point to buy cigarette rolls when he saw two people at the veranda of the RB Patel Supermarket. One was crouching down, while the other was standing on his back in order to put his hand inside a window of the supermarket. PW5 recognised the two people as A1 and J1 as he had known them his whole life.
3. After investigations were completed by Police, A1 and J1 were arrested and interviewed under caution where they both admitted to the offences as charged. A1 admitted at Q&A 43 – 66 that he was with J1 and another and that they planned to break into RB Patel Supermarket. A1 said that he and J1 went to the main door of the supermarket, removed two louvre blades and stole four bottles of liquor – two bottles of Bombay Sapphire and two bottles of Coruba rum whilst a third person stood watch. J1 made similar admissions at Q&A 45 – 62 that he and A1 broke into the supermarket as they did not have any cash to buy drinks. A1 stood on J1's shoulder, removed two louvre blades and stole four bottles of alcohol while a third person stood watch nearby.

The Records of Interview for A1 and J1 are attached as Annexure 2.

4. At around 7.45am on the same day, PW1 arrived at work only to discover that the supermarket had been burgled. PW1 then informed PW2 to conduct a stocktake and it was revealed that the following bottles of alcohol were missing:
 - i) 2x 1litre Bombay Sapphire gin;
 - ii) 3x 700ml Coruba rum;
 - iii) 1x 700ml Johnnie Walker Whisky; and
 - iv) 1x 700ml Shirnoff Vodka.

The stolen bottles of alcohol were not recovered.

The Stocktake inventory is attached as Annexure 3.

5. *On 2nd August, 2019, A1 and J1 pleaded guilty as charged to both counts of Aggravated Burglary and Theft in the presence of their counsel.*
3. 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. [See *State v Prasad* [2017] FJHC 761; HAC254.2016 (12 October 2017) and *State v Naulu* [2018] FJHC 548 (25 June 2018)]
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. 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. You are 18 years old and you are a year 12 student. It is submitted that you were persuaded by the co-offender who was not charged to commit the offences.
7. According to the summary of facts there was preplanning. This will be considered as an aggravating factor.

8. 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 a young first offender;
 - b) You have sought forgiveness from the complainant;
 - c) The complainant has been fully restituted by you; and
 - d) You have cooperated with the police.

9. I would select 06 years as the starting point of your aggregate sentence. I would add one year to your sentence in view of the aforementioned aggravating factor and would deduct 03 years in view of the above mitigating factors. Now your sentence is an imprisonment term of 04 years.

10. In view of your early guilty plea, I would grant you a discount of one-third. Accordingly, the final sentence is an imprisonment term of 02 years and 08 months. I would fix your non-parole period at 18 months in view of the provisions of section 18(1) of the Sentencing and Penalties Act. I have considered your personal circumstances and the circumstances of the offending in fixing the non-parole period.

11. It is submitted that you have been arrested in view of this matter on 22/05/19 and you were granted bail on 19/07/19. Accordingly, you have spent about 02 months in custody in view of this matter. 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.

12. In the result you are sentenced to an imprisonment term of 02 years and 08 months with a non-parole period of 18 months. Given the time spent in custody, the time remaining to be served is;
 - Head Sentence – 02 years and 06 months
 - Non-parole Period – 16 months

13. In order to promote your rehabilitation, and especially considering the fact that there has been full restitution, I have decided to suspend the remaining period of your sentence for a period of 03 years.
14. The court clerk will explain you the effects of a suspended sentence.
15. Accordingly, you will be released today. You are thoroughly warned and are hereby advised to hereafter abide by the laws in this country and lead a good life.
16. Thirty (30) days to appeal to the Court of Appeal.

Vinsent S. Perera
JUDGE

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