

IN THE HIGH COURT OF FIJI
AT SUVA
CRIMINAL JURISDICTION

Crim. Case No: HAC 291 of 2019

BETWEEN: STATE

PROSECUTION

A N D: PENI TUCAKETALE DELAI

ACCUSED PERSON

Counsel : Ms. M. Konrote for the State
: Ms. L. David for Accused

Date of Sentence : 02nd December 2019

SENTENCE

1. Mr. Peni Tucaketale Delai, you are being charged with one count of Burglary, contrary to Section 313 (1) (a) of the Crimes Act, which carries a maximum sentence of seventeen (17) years imprisonment and five counts of Theft, contrary to Section 291 (1) of the Crimes Act, which carries a maximum sentence of ten years imprisonment. The particulars of the offences are that:

FIRST COUNT

Statement of Offence

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

Particulars of Offence

PENI TUCAKETALE DELAI, in the company of another, on 26 July 2019, at Suva in the Central Division, entered into the premises of Laucala Bay Secondary School as trespassers with intent to commit theft therein.

SECOND COUNT

Statement of Offence

THEFT: *Contrary to Section 291 (1) of the Crimes Act 2009.*

Particulars of Offence

PENI TUCAKETALE DELAI, in the company of another, on 26 July 2019, at Suva in the Central Division, dishonestly appropriated (stole) 01 safe box worth \$700.00 which contained cash of \$11, 836.85, the properties of Tanjin Group Fiji Limited, with the intention to permanently deprive Tanjin Group Fiji Limited of its said properties.

THIRD COUNT

Statement of Offence

THEFT: *Contrary to Section 291 (1) of the Crimes Act 2009.*

Particulars of Offence

PENI TUCAKETALE DELAI, in the company of another, on 26 July 2019, at Suva in the Central Division, dishonestly appropriated (stole) 01 black wallet containing \$200.00 cash, 01 Westpac ATM card, 01 Chinese Bank ATM card, 01 Chinese ID card, 01 coin box containing \$50.00 in coins, 01 Honor brand mobile phone worth \$900.00, 01 pair of sports shoes worth \$200.00, all to the total value of \$1,350.00, the properties of Changwei Mi, with the intention to permanently deprive Changwei Mi of his said properties.

FOURTH COUNT

Statement of Offence

THEFT: *Contrary to Section 291 (1) of the Crimes Act 2009.*

Particulars of Offence

PENI TUCAKETALE DELAI, in the company of another, on 26 July 2019, at Suva in the Central Division, dishonestly appropriated (stole) 01 black Lenovo brand laptop worth \$2000.00, 01 black bag worth \$69.00 which contained keys and other items and 01 grey suitcase worth \$69.50 which contained documents, all to the total value of \$2, 138.50, the properties of Feng Guo, with the intention to permanently deprive Feng Guo of his said properties.

FIFTH COUNT

Statement of Offence

THEFT: Contrary to Section 291 (1) of the Crimes Act 2009.

Particulars of Offence

PENI TUCAKETALE DELAI, in the company of another, on 26 July 2019, at Suva in the Central Division, dishonestly appropriated (stole) 01 White Huawei brand mobile phone worth \$700.00, 01 brown wallet worth \$20.00 containing 200 Yuan currency, 01 Westpac ATM card, 01 Chinese Bank ATM card, 01 Chinese ID card and 01 silver bracelet worth \$700.00, all to the total value of 1, 420.00 and 200 Yuan, the properties of Yanfei Yin, with the intention to permanently deprive Yanfei Yin of his said properties.

SIXTH COUNT

Statement of Offence

THEFT: Contrary to Section 291 (1) of the Crimes Act 2009.

Particulars of Offence

PENI TUCAKETALE DELAI, in the company of another, on 26 July 2019, at Suva in the Central Division, dishonestly appropriated (stole) 01 black Lenovo brand laptop worth \$1500.00, the properties of Liqiang

Wang, with the intention to permanently deprive Liqiang Wang of his said properties.

2. You pleaded guilty to these six counts on the 15th of November 2019. 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 now convict you to each of these five counts.
3. According to the summary of facts, which you admitted in court, you have entered into the room of the Chinese contractors situated at the premises of the Laucala Bay Secondary School, with another at about 15.30 hours on the 26th of July 2019. Having entered into the said room you and your accomplice had stolen the items therein as stated in the particulars of the offences of Counts 2 to 6.
4. This is an incident of breaking into an industrial property and stealing therein, while the owners were away. The crimes in this nature undoubtedly affect the entire community. You have instilled fear and insecurity among the people by committing this crime. Hence, I find this is a serious crime.
5. All of these 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.
6. 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)**). Justice Perera found the applicable tariff for the Aggravated Burglary is 6 to 14 years imprisonment. (**State v Prasad (2017) FJHC762; HAC 254.2016 (12 October 2017, State v Naulu 2018 FJHC548 (25 June 2018)**).
7. The tariff for the offence of Theft has been stipulated in **Ratusili v State [2012] FJHC 1249; HAA011.2012 (1 August 2012)**, where Justice Madigan held that:

- i) *For a first offence of simple theft the sentencing range should be between 2 and 9 months.*
 - ii) *Any subsequent offence should attract a penalty of at least 9 months.*
 - iii) *Theft of large sums of money and thefts in breach of trust, whether first offence or not can attract sentences of up to three years*
 - iv) *Regard should be had to the nature of the relationship between offender and victim.*
 - v) *Planned thefts will attract greater sentences than opportunistic thefts.*
8. You and your accomplice had gone to this premises to meet the contractors in order to ask for a job. However, you found no one at the location. You and your accomplice then decided to steal from the contractors. You then entered into the room by forcefully removing the window shutters and 4 louver blades from the side of the buildings. Accordingly, it is clear that this is an opportunistic crime. You found an opportunity and then carried out this crime against the very person from whom you went to ask for an employment. The value of the stolen items are substantially high. Therefore, I find the level of culpability and harm in this matter is substantially high.
 9. Having taken into consideration the serious nature of this crime and the level of culpability and harm, I select thirty six (36) months as the starting point.
 10. You are a 23 years old young first offender. You pleaded guilty of these offences at the first available opportunity. In doing that you have expressed and shown your remorse and repent in committing this crime. Therefore, you are entitled to a substantial discount for your early plea of guilty.

11. In view of the reasons discussed above, I reduce four (4) months for your young age and unblemished character, reaching thirty two (32) months. I further reduced 6 months for your early pleas of guilty making twenty six (26) months as the final sentence.
12. Taking into consideration your young age, opportunities for rehabilitation, and the nature of this offending, I partially suspend your sentence pursuant to Section 26 (1) of the Sentencing and Penalties Act. Accordingly, I order that you serve eighteen (18) months of the sentence in prison forthwith and the remaining period of eight (08) months is suspended for a period of three (3) years.
13. If you commit any crime during that period of three (3) years and found guilty by the court you are liable to be charge and prosecute for an offence in pursuant of Section 28 of the Sentencing and Penalties Decree.
14. You have been in remand custody for this case for a period of nearly four (4) months before this sentence. In pursuant of Section 24 of the Sentencing and Penalties Act, I consider the period of four (4) months as a period of imprisonment that have already been served by you.
15. Accordingly, the actual period of sentence that you are ordered to serve is fourteen (14) months.
16. Thirty (30) days to appeal to the Fiji Court of Appeal.




R.D.R.T. Rajasinghe
Judge

At Suva
02nd December 2019

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