

IN THE HIGH COURT OF FIJI AT SUVA
[CRIMINAL JURISDICTION]

CASE NO: HAC. 084 of 2018

BETWEEN :

STATE

AND :

EMINONI BULUBULUTURAGA

Counsel :

Ms. Lodhia S. and Mr. Zunaid Z. for State

:

Accused absent and Unrepresented

Hearing on :

12th November 2019- 13th November 2019

Summing up on :

14th November 2019

Judgment :

15th November 2019

Sentence :

09 December 2019

SENTENCE

1. Mr. Eminoni Bulubuluturaga, you stand convicted to the counts of aggravated burglary and theft after a full trial. The trial was held in your absence as you knew about this case and failed to attend to it without a lawful excuse. At the conclusion of the evidence and after the directions given in the summing up, the assessors unanimously found you guilty to the counts of Aggravated Burglary and Theft. Having reviewed the evidence, this court by its judgment dated 15th of November 2019, having concurred with the unanimous opinion of the assessors, convicted you to the alleged offences.

2. You were charged as follows;

COUNT 1

Statement of Offence

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

Particulars of Offence

Eminoni Bulubuluturaga with others, between the 18th day of November 2017 and the 19th day of November 2017 at Nadera in the Central Division, in the company of each other, entered into the property of Ratu Orisi Bolenaivalu, as trespassers, with intent to commit theft.

COUNT 2

Statement of Offence

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

Particulars of Offence

Eminoni Bulubuluturaga with others, between the 18th day of November 2017 and the 19th day of November 2017 at Nadera in the Central Division, dishonestly appropriated 6 x Tabua's (Whales-tooth), 1 x Straw bag and 1 x 40 inch TCL brand television, the properties of Ratu Orisi Bolenaivalu, with intention of permanently depriving Ratu Orisi Bolenaivalu of the said properties.

3. Section 4 of the Sentencing and Penalties Act No. 42 of 2009 ("*Sentencing and Penalties Act*") stipulates the relevant factors that a Court should take into account during the sentencing process. I have duly considered these factors in determining the sentence to be imposed on him.
4. A person who enters a building with one or more other persons as a trespasser, with the intention to steal commits an aggravated burglary punishable by 17

years' imprisonment under section 313(1)(a) of the Crimes Act. Theft is committed if a person dishonestly appropriates property belonging to another with the intention to permanently depriving him of the property. The maximum penalty for theft is 10 years imprisonment under section 291 of the Crimes Act.

5. The accepted tariff for Aggravated Burglary is 6 to 14 years imprisonment. Though there is some uncertainty in respect of the recommended tariff, as I have reasoned out in **State v Chand** - Sentence [2018] FJHC 830; HAC44.2018 (6 September 2018), I prefer to follow Hon. Justice **Perera in State v Naulu** - [2018] FJHC 548 (25 June 2018), as it gives effect to the intention of the legislature, best.

As for the offence of theft the accepted tariff would range from 2 months to 3 years (**Ratusili v State** [2012] FJHC 1249; HAA 011.2012).

6. The two offences he has committed are founded on the same facts. Therefore, according to section 17 of the Sentencing and Penalties Act, it would be appropriate to impose an aggregate sentence against him, for the two offences he has committed. Section 17 of the Sentencing and Penalties Act 2009 ("*Sentencing and Penalties Act*") states;

"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. The aggravating factors present in this case are that this was a pre-planned invasion and none of the stolen items were recovered. Further, these types of offences have increased due to the leniency they are dealt with and society now demands an unsympathetic and/or stern judicial approach on these types of offences in order to curtail them.

8. The case was tried in your absence and the police managed to arrest and produce you in court on the date of the sentence hearing. When you were arrested and produced in court, you were offered an opportunity to explain your absence and being failed to offer a reasonable explanation, were remanded. Further, at the time you were produced in court, your right to counsel was explained and granted. You having understood the same have refused any legal assistance and elected to self-represent. Though the court offered an opportunity you have not made any submission in mitigation, thereafter.
9. Though the accused has failed to submit anything in mitigation, I will consider the facts that he is a young offender and that he has no previous convictions on record submitted by the State, as mitigating factors.
10. I would select 6 years as the starting point of your aggregate sentence. I would enhance 2 years due to aggravating factors mentioned above. Now your sentence is an imprisonment term of 8 years.
11. I will deduct 3 years from the above on the available mitigatory factors mentioned above and your final sentence would be 5 years of imprisonment.
12. You have been arrested for this offence 20th of February 2018. Thereafter you escaped from prison, somewhere between the 26th of March 2018 and 03rd April 2018. Then you were re-arrested and produced in court on the 12th of April 2018. Thereafter, while in remand, you have mislead a learned Magistrate in Nasinu and escaped from the lawful custody on the 30th of July, 2018. Thereafter you were arrested and produced on the 21st of November 2019. The total remand period you have been in was about 5 months and two weeks. In lieu of that, I will deduct 06 months from your final sentence of which the remainder, you'd have to serve will be 4 years and 6 months. Taking into account all the circumstances of this case, the non-parole period I would fix in

view of the provisions of section 18 of the Sentencing and Penalties Act (as amended) would be 3 years and 06 months.

12. You will have 30 days to appeal to the Court of Appeal if you so desire.



At Suva

09th December 2019

Solicitors for the State : ***Office of the Director of Public Prosecutions, Suva***
Solicitors for the Accused : ***Accused appeared in person***