

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

CASE NO: HAC. 66 of 2018

BETWEEN : **STATE**

AND : **1. ULAIASI TONI**
2. KINIVILIAME ROKOTAGANE

Counsel : *Mr. S. Komaibaba for State*
: *Ms. M. Ratidara for the 1st Accused*
: *Ms. S. Prakash for the 2nd Accused*

Hearing on : *05th July 2019*
Sentence : *16th July 2019*

SENTENCE

1. Mr. Ulaiasi Toni and Mr. Kiniviliame Rokotagane, you have freely and voluntarily pleaded guilty to the counts of aggravated burglary and theft before the trial at an early opportunity. I am satisfied and convinced that you have pleaded so, unequivocally and having understood the consequences of such a plea.
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

Ulaiasi Toni and Kiniviliame Rokotagane with another between the 24th day of December 2017 and 10th day of January 2018, at Vatukarasa, Tailevu, in the

Eastern Division, entered into Coloinavakacere Primary School as trespassers with intent to steal from therein.

COUNT 2

Statement of Offence

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

Particulars of Offence

Ulaiasi Toni and Kiniviliame Rokotagane with another between the 24th day of December 2017 and 10th day of January 2018, at Vatukarasa, Tailevu, in the Eastern Division, dishonestly appropriated 5 Ubislate 7 Smart phones valued at \$857.00, the property of Coloinavakacere Primary School, with the intention to permanently deprive the said Coloinavakacere Primary School of the said properties.

3. State has submitted the following as the Summary of Facts;
 1. Accused 1 in this matter is Ulaiasi Toni (DOB 16/02/99) who was aged 18 years and 10 months by 24 December 2017.
 2. Accused 2 in this matter is Kiniviliame Rokotagane (DOB 27/09/95) who was aged 22 years and 02 months by 24 December 2017.
 3. The victim entity in this matter is Coloinavkacere Primary School situated in Vatukarasa, Tailevu in the Eastern Division.
 4. On January 2018, Paula Taura, the head teacher at Coloinavkacere Primary School (the school) discovered that the school had been broken into and various items belonging to the school had been stolen, in particular, 05 Ubislate 7 smartphones worth FJ\$857.00.
 5. The matter was reported to the Police and investigations were conducted which led to both accused persons being arrested and interviewed under caution.
 6. Under caution, both accused had voluntarily admitted to have had acted together with each other sometime between 24 December 2017 to 10 January 2018 where they had entered into the school as trespasses with intent to steal from the school by removing louvre blades from the school window to gain entry into the school building (Accused 1 at Q & A 48-97), while Accused 2 at (Q & A 17 – 40).
 7. Accused 2 had, at the material time, entered into the school staff room through the window first followed by Accused 1 and both had

entered into the school staff room unlawfully as they both had wanted to steal items from inside the school building.

8. Accused 1 and Accused 2 after entering into the school staff room had then stolen 05 Ubislate 7 smart phones worth FJ\$857.00 belonging to the school which they later sold to another.
4. The said Summary of facts were read over and explained to you. You having understood the same agreed them to be true and correct.
5. I find that the summary of facts supports all elements of the charges in the Information, and find the charges proved on the Summary of Facts agreed by you. Accordingly, I find you guilty on your own plea and I convict both of you of the count of Aggravated Burglary and also of the count of Theft as charged.
6. 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 you.
7. 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.
8. 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 His Lordship 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).


9. The two offences you have 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 you, for the two offences you have

committed. Section 17 of the Sentencing and Penalties Act 2009 (“Sentencing and Penalties Act”) states;

17. *“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.”*
10. The aggravating factors present in your case are that this was a pre-planned invasion and some of the stolen properties were not 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.
11. Their mitigating factors are;
 - i. Both of you were very young at the time this alleged offence was committed.
 - ii. None of you have any previous convictions as for material before me.
 - iii. You pleaded guilty at an early opportunity. However, I note that you held on to your stance, which the prosecution was reluctant to accept. Therefore, I will consider your plea to be at the first available opportunity.
 - iv. You have co-operated with the police, said to be remorseful and seek leniency and forgiveness from the court.
 - v. The 2nd Accused has volunteered and sought reconciliation from the complainant.
12. I would select 6 years as the starting point of your aggregate sentence. I would enhance 12 months due to aggravating factors mentioned above and deduct 30 months in consideration of the mitigating factors. Now your sentence is an imprisonment term of 54 months.
13. You have pleaded guilty at the very first opportunity and I will award the maximum discount of 1/3 for that. Therefore your final sentence is 3 years of imprisonment.
14. You have been in remand from 16th to the 18th of January 2018, for two days. Though the 1st accused happened to be remanded due to absconding of bail, I will neither consider it in his favor nor against. 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 would be 2 years.

15. Since both of you are first time offenders, for the purpose of promoting rehabilitation, I would suspend your sentence in terms of section 26(1) of the Sentencing and Penalties Act, for a period of 5 years. Therefore, your non-parole period would be relevant only in the event you are to serve your term.
16. The consequences of a committal of another offence within the operational period of the said suspended term will be explained to you by the clerks.
17. You have 30 days to appeal to the Court of Appeal if you so desire.


Chamath S. Morais
JUDGE



Solicitors for the State : ***Office of the Director of Public Prosecutions, Suva.***
Solicitors for the Accused : ***Legal Aid Commission, Suva.***