

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

High Court Criminal Case No. HAC 149 of 2018

BETWEEN : THE STATE

AND : 1. INOKE TAVAI
2. PONIPATE TURUVA

Counsel : Ms Saini Naibe for the State
Ms Jowen Singh for the Accused 1 & 2

Date of plea : 29 January 2019

Date of Sentence : 20 August 2019

SENTENCE

1. Inoke Tavai and Ponipate Turuva, you are to be sentenced upon freely and voluntarily pleading guilty to one count of aggravated burglary contrary to section 313(1)(a) of the Crimes Act 2009 and another count of theft contrary to section 291(1) of the Crimes Act 2009.

2. The Court is satisfied that your pleas are unequivocal and upon your admission of summary of facts, each of you are now convicted for the first and the second counts, as per the Information.
3. According to the summary of facts on 24 July 2018 at around 3.30 am you, Ponipate Turuva were going back to your room after work. On your way to the room you noticed the door of the liquor room was open. You then called Inoke Tavai and planned to enter the liquor room. You covered your faces to avoid detection by surveillance cameras. You Inoke Tavai entered the liquor room while you Ponipate Turuva waited outside. You stole 14 bottles of liquor valued at \$ 1250.84 the property of Treasure Island Resort. You gave two bottles to one Serelino Lule and hid the rest by burying them in the sand. The complainant noticed that some liquor was missing from the liquor room and reported the matter. After a random security check two bottles were recovered from the bag of Serelino Lule. Later both of you were arrested and you admitted to the offences under caution. Both of you were employed at the Treasure Island Resort when you committed the offences. You returned the stolen items to the resort.
4. You breached the trust of your employer. Avoiding detection by covering faces and hiding stolen items by burying them are clear signs of planning. I consider those as aggravating factors.
5. I have considered the mitigation submissions filed by the Legal Aid Counsel on your behalf. You, Inoke Tavai are 20 years and you look after your parents. You, Ponipate Turuva are 25 years and you have a young family. Both of you are first offenders.
6. Both of you have pleaded guilty at the earliest opportunity. The weight that should be attached to an early plea was discussed as follows by Justice Goundar in Mataunitoga v The State [2015] FJCA 70; AAU125 of 2013 (28 May 2015);

“In considering the weight of a guilty plea, sentencing courts are encouraged to give a separate consideration and qualification to the guilty plea (as a matter of practice and not principle) and assess the effects of the plea on the accused by taking into account all the relevant matters such as remorse, witness vulnerability and utilitarian value. The timing of the plea, of course, will play an important role when making that assessment.”

7. You have expressed remorse by pleading guilty at the first available opportunity and therefore I decide to give you 1/3 discount for the early plea.
8. The maximum punishment for aggravated burglary is 17 years imprisonment. The tariff of 18 months to 3 years set in Turuturuvesi v State [2002] FLR 521 (23 December 2002) has been the tariff adopted by the courts in a long line of cases even after the introduction of the Crimes Act: State v. Drose [2017] FJHC 205; HAC 325.2015 (28 February 2017); State v Tukele - [2018] FJHC 558; HAC179.2018 (28 June 2018); State v. Rasegadi & Another [2018] FJHC 364; HAC 101.2018 (7 May 2018); State v Ravunaceva - Sentence [2018] FJHC 1026; HAC152.2018 (25 October 2018).
9. In State v Naulu [2018] FJHC 548 (25 June 2018) Justice Perera has proposed a new tariff of 6 years to 14 years for aggravated burglary. However, 18 months to 3 years seems to be the preferred tariff predominantly adopted by the courts. In State v Ravunaceva [2018] FJHC 1026; HAC152.2018 (25 October 2018) Justice Aluthge, while referring to the tariff of 18 months to 3 years endorsed by the Court of Appeal in Leqavuni v State [2016] FJCA 31 stated that;

“I believe that the tariff that existed before *Leqavuni v State* (supra) should be applied by lower courts until the Court of Appeal decides otherwise.”
10. The maximum punishment for theft is 10 years imprisonment and the tariff for theft is 2 months to 3 years subject to the nature of offending as per Ratusili v State [2012]FJHC 1249 HAA011.2012 (1 August 2012).

11. The offences in this case are originated from the same transaction. Section 17 of the Sentencing and Penalties Act provides that if the offences are founded on the same facts the court can impose an aggregate sentence. Therefore, I decide to impose an aggregate sentence in respect of the first and second counts.

12. Having taken into account all the factors discussed above I decide to impose an aggregate sentence of 18 months imprisonment on each of you.

13. You are young offenders. Your confessions to the police and the guilty pleas manifest genuine remorse. You have previous good character and I am of the view that you have the potential to rehabilitate and stay away from troubles. Also there is no violence used or you have not caused damage to any property. Taking those factors into account I decide to suspend your sentences.

14. Accordingly, the following sentences are imposed on you.

Inoke Tavai - I impose 18 months imprisonment on you and suspend it for 3 years.

Ponipate Turuva - I impose 18 months imprisonment and suspend it for 3 years.

15. The effects of breaching suspended sentences are explained to you in open court.

30 days to appeal to the Court of appeal.



A handwritten signature in blue ink, consisting of several overlapping loops and lines, positioned above the printed name.

Rangajeeva Wimalasena
Acting Judge

Solicitors

Solicitors for the State : Office of the Director of Public Prosecutions

Solicitors for the Accused: Office of the Legal Aid Commission