

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

High Court Criminal Case No. HAC 199 of 2020

BETWEEN : THE STATE

AND : 1. SIMELI BATIRATU
2. JAMOSI WALKER

Counsel : Ms Wakesa Elo for the State
Ms Namrata Mishra for the first Accused
Mr Kemueli Verebalavu for the second Accused

Date of plea : 22 September 2020

Date of Sentence : 24 November 2020

SENTENCE

1. You, Simeli Batiratu and Jamosi Walker are to be sentenced upon freely and voluntarily pleading guilty to the following counts;

First Count

Aggravated burglary: Contrary to Section 313(1)(a) of the Crimes Act 2009.

Particulars of offence

Simeli Batiratu and Jamosi Walker between the 26th day of June 2020 and the 28th June 2020 at Vereta, Nausori in the Eastern Division entered into the dwelling house of Eroni Tuinaceva as trespassers with intention to commit theft.

Second Count

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

Particulars of offence

Simeli Batiratu and Jamosi Walker between the 26th day of June 2020 and the 28th day of June 2020 at Vereta, Nausori in the Eastern Division stole 1 X HP Grey Laptop, 1 X PS4 Console and controller, 1 X JBL speaker, 1 X black hoodie, 1 X Everlast hoodie, 1 X Long sleeve shirt, 5 X PS4 Game CD's and 1 X Grey pearl necklace, the property of Eroni Tuinaceva with the intention to permanently deprive Eroni Tuinaceva of the said properties.

2. Having been satisfied that your pleas are unequivocal and upon your admission of summary of facts, each of you are now convicted for the first and second counts, as per the Information.
3. According to the summary of facts, between 26 June 2020 and 28 June 2020 you, Jamosi Walker entered into the Complainant's house by removing louver blades at the bathroom window. You, Simeli Batiratu also then entered into the Complainant's house. You stole items all to the total value of \$ 3106.00. Only the following items were recovered;
 - a) 1 X Grey and Black HP Laptop valued at \$ 1200.00
 - b) 5 X PS4 games in CD s valued at \$ 306.00
 - c) 1 X PS4 console and controller cord valued at \$ 1200.00
 - d) 1 X Grey Everlast sleeves hoodie valued at \$ 70.00

4. It should be noted that you have committed serious offences by breaking into a dwelling house and stealing items of substantial value. However apart from the prevalence of similar offences I do not find any other aggravating factors in this case.
5. I have considered the mitigation submissions filed by the Counsel of the Legal Aid Commission. Your counsel requested that lenient sentences be imposed on you.
6. You, Simeli Batiratu are 18 years old and you are enrolled at a training Centre for a course on welding. You are a first offender and you expressed remorse by tendering an early guilty plea. You have cooperated with the Police.
7. You, Jamosi Walker are 19 years and you were working as a cane cutter. You are a first offender and you have shown remorse with your early guilty plea. You have cooperated with Police.
8. Both of you have pleaded guilty saving the court's time. I consider it as genuine expression of remorse. Therefore, you are entitled to a substantial discount.
9. The maximum punishment for aggravated burglary is 17 years imprisonment. The tariff is 18 months to 3 years.
10. The maximum punishment for theft is 10 years imprisonment and the tariff for theft is found in **Ratusili v State** [2012]FJHC 1249 HAA011.2012 (1 August 2012) as follows;
 - 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.

11. The offences that you are charged with, 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 20 months imprisonment on each of you.

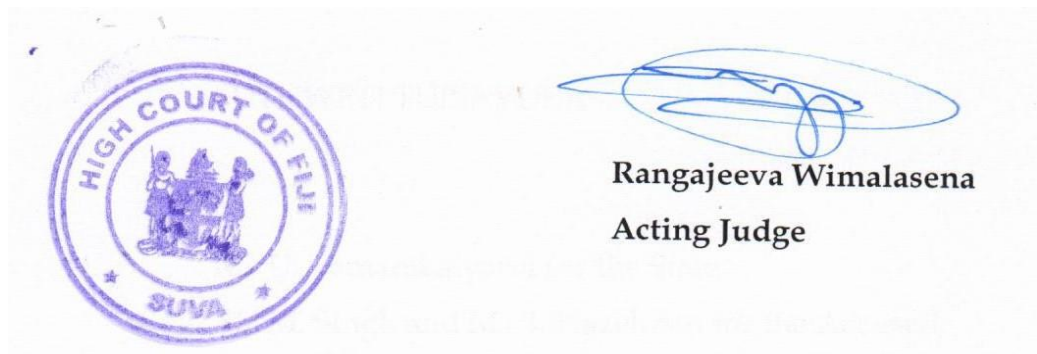
13. Both of you are young first offenders. You have been in remand custody for nearly 4 months. Taking into account your clean records, young age, the time spent in remand custody and the significance of giving you an opportunity to rehabilitate yourselves, I decide to suspend the aggregate sentences imposed on each of you.

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

First Accused – I impose 20 months imprisonment and suspend it for 3 years.

Second Accused – I impose 20 months imprisonment and suspend it for 3 years.

30 days to appeal to the Court of appeal.



At Suva
24 November 2020

Solicitors

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

Solicitors for the 1st and 2nd Accused: Office of the Legal Aid Commission