

**IN THE HIGH COURT OF FIJI**  
**AT LAUTOKA**  
**CRIMINAL JURISDICTION**

**Criminal Case No. HAC 191 of 2019**

**BETWEEN** : **THE STATE**

**AND** : **1. SERU WILLIAM ELIJAH TURAGANIVALU**  
**2. MOAPE WARAKATA**  
**3. MALAKAI VULA DANIVA CARASOBU**

*Counsel* : *Mr. A. Singh for the State*  
*Mr. M. Naivalu for the 1<sup>st</sup> and 3<sup>rd</sup> accused*  
*Ms. J. Manuelli for the 2<sup>nd</sup> Accused*

*Date of Hearing* : *25<sup>th</sup> August 2020*  
*Date of Sentence* : *22<sup>nd</sup> September 2020*

**SENTENCE**

1. Mr. Seru William Elijah Turaganivalu, Mr. Moape Wara Kata and Mr. Malakai Vula Daniva Carasobu, three of you have freely and voluntarily pleaded guilty to the counts of aggravated burglary and theft at the first 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 ONE

### *Statement of Offence*

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

### *Particulars of Offence*

Seru William Elijah Turaganivalu, Moape Wara Kata and Malakai Vula Daniva Carasobu, on the 14<sup>th</sup> day of October, 2019, at Lautoka in the Western Division, entered as trespassers into the house of Mildred Waid, with intent to commit theft from the said property.

## COUNT TWO

### *Statement of Offence*

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

### *Particulars of Offence*

Seru William Elijah Turaganivalu, Moape Wara Kata and Malakai Vula Daniva Carasobu, on the 14<sup>th</sup> day of October, 2019, at Lautoka in the Western Division, dishonestly appropriated (stole);

- a. 1 x Headphone with Tablet valued at \$1000.00
- b. 1 Smart Watch valued at \$500.00
- c. Assorted Chocolates valued at \$200.00
- d. 1 x Nike track pants valued at \$25.00
- e. Car Key all to the total value of \$1725.00 the said property of Mildred Waid with the intention of permanently depriving the said Mildred Waid.

3. Summary of Facts were submitted by the State and read over and explained to you. All three of you having understood, admitted the said summary of facts to be true and correct

4. Summary of facts state that,

The three accused persons in the present matter are:

1. Seru William Elijah Turaganivalu (B-1), 18 years of age, Mechanic of 5 Chandmari Street, Lautoka.

2. Moape Wara Kata (B-2), 18 years of age, unemployed of Sukanaivalu Road, Kashmir, Lautoka.
3. Malakai Vula Daniva Carasobu (B-3), 20 years of age, employed at Friends Night Club of Davuilevu Housing, Nakasi, Suva.

On the 14<sup>th</sup> day of October, 2019 between 9.30 am to 2.00 pm, B-1, B-2 and B-3 forcefully entered into the dwelling house of Mildred Waid (Complainant), 49 years, Real Estate Agent of 64 S. M. Koya Road, Kashmir Road, Lautoka and stole the following items:

- a. 1 x Headphone with Tablet valued at \$200.00
- b. 1 x Smart watch \$500-.00
- c. Assorted chocolates \$200.00
- d. 1 x nike track pants \$25.00
- e. Car key

At the time of the incident, the complainant had securely locked the house and had left the house with her daughter. The point of entry to the house was through a window.

Upon checking the house the complainant discovered that the above items had been stolen from the house.

Matter was reported to Police. A team of Investigating Officers were appointed for quick action. Through investigation the three accused were arrested and taken in for questioning.

B-1 and B-2 were caution interviewed. Both admitted to committing the offence in their Record of Interview. During the course of the investigation stolen items have been recovered from both the defendants.

B-3 has denied committing the offence in their Record of Interview. However, stolen items have been recovered from B-3.

The car key, Head phones and the tablet have been recovered. The complainant has positively identified the items as belonging to him.

5. I find that the admitted facts support 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 you for the offences of Aggravated Burglary and Theft as charged.
6. 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.
7. 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 the said interpretation 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).

8. 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;

*"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."*

9. Burglary of home must be regarded a serious offence. A home is a private sanctuary for a person. People are entitled to feel safe and secure in their homes. Any form of criminal intrusion of privacy and security of people in their homes must be dealt with condign punishment to denounce the conduct and deter others. As Lord Bingham CJ in *Brewster* 1998 1 Cr App R 220 observed at 225:

*“Domestic burglary is, and always has been, regarded as a very serious offence. It may involve considerable loss to the victim. Even when it does not, the victim may lose possessions of particular value to him or her. To those who are insured, the receipt of financial compensation does not replace what is lost. But many victims are uninsured; because they may have fewer possessions, they are the more seriously injured by the loss of those they do have. The loss of material possessions is, however, only part (and often a minor part) of the reason why domestic burglary is a serious offence. Most people, perfectly legitimately, attach importance to the privacy and security of their own homes. That an intruder should break in or enter, for his own dishonest purposes, leaves the victim with a sense of violation and insecurity. Even where the victim is unaware, at the time, that the burglar is in the house, it can be a frightening experience to learn that a burglary has taken place; and it is all the more frightening if the victim confronts or hears the burglar. Generally speaking, it is more frightening if the victim is in the house when the burglary takes place, and if the intrusion takes place at night; but that does not mean that the offence is not serious if the victim returns to an empty house during the daytime to find that it has been burgled. The seriousness of the offence can vary almost infinitely from case to case. It may involve an impulsive act involving an object of little value (reaching through a window to take a bottle of milk, or stealing a can of petrol from an outhouse). At the other end of the spectrum it may involve a professional, planned organization, directed at objects of high value. Or the offence may be deliberately directed at the elderly, the disabled or the sick; and it may involve repeated burglaries of the same premises. It may sometimes be accompanied by acts of wanton vandalism.”*

10. There are not many aggravating factors mentioned above present in your case. Anyway, 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. The mitigating factors are your expression of remorse, cooperating with the police and that 1<sup>st</sup> & 2<sup>nd</sup> accused are only 18 years and the 3<sup>rd</sup> Accused is 20 years of age at the time of the offence and all of them being of good behavior up to this incident. Some of the stolen items were recovered and that too would be considered in mitigation.
12. I would select 6 years as the starting point of your aggregate sentence. I would enhance 1 year due to aggravating factors mentioned above and deduct 3 years in view of the above mitigating factors. Now your sentence is an imprisonment term of 4 years. Considering your early guilty plea through which you have saved this court's time and resources, you will be given a discount of one-third. Accordingly, your final aggregate sentence is an imprisonment term of 32 months. You were arrested on the 18<sup>th</sup>/19<sup>th</sup> of October 2019. The 1<sup>st</sup> & 3<sup>rd</sup> accused were granted bail on the 13<sup>th</sup> of November 2019 and the 2<sup>nd</sup> accused was granted bail on the 13<sup>th</sup> of February 2020. Accordingly, I will deduct 1 month from the 1<sup>st</sup> and 3<sup>rd</sup> accused's sentences and 4 months from the 2<sup>nd</sup> accused's sentence as already served. Therefore the remainder of each of their sentences would be;  
1<sup>st</sup> Accused - 31 months  
2<sup>nd</sup> Accused - 28 months; and  
3<sup>rd</sup> Accused - 31 months
13. Now I will consider the provisions of section 26(1) of the Sentencing and Penalties Act.
14. None of you have any previous convictions or pending cases. Further, all of you are only 20 years or below. Therefore, in consideration of the submissions made on your behalf, I am of the view it is nothing but fair that you should be given an opportunity to mend your ways and become good law abiding citizens. In result, each of your imprisonment term will be suspended for a period of 4 years.
15. The consequences of a violation of the suspended term of imprisonment will be explained to you.

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



  
**Chamath S. Morais**  
**JUDGE**

**AT Lautoka**  
**22<sup>nd</sup> Day of September 2020**

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

***Solicitors for the Accused : Naiwalu Law, Lautoka for the 1<sup>st</sup> & 3<sup>rd</sup> Accused.***  
***Legal Aid Commission, Lautoka for the 2<sup>nd</sup> Accused.***