

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

Charles Ravu Nakalevulevu and Joseva Hope Bolawaqatabu, on the 27th of May 2020 at Sigatoka, in the Western Division, entered the Bula Dairy Shop owned by Lalita Thakur as trespassers, with the intention to steal from therein.

COUNT 2

Statement of Offence

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

Particulars of Offence

Charles Ravu Nakalevulevu and Joseva Hope Bolawaqatabu, on the 27th of May 2020 at Sigatoka, in the Western Division, dishonestly appropriated the following items:

- a) 1 x gross BH 10 cigarette
- b) 26 x Gas Lighters
- c) Box of Zic Zac wrappers
- d) Food Items
- e) 4 x Sunglasses
- f) 6 x Caps

the properties of Lalita Thakur, with the intention of permanently depriving the said Lalita Thakur, of the said properties.

COUNT 3

Statement of Offence

Breach of Bail Condition: Contrary to section 26 (1) and (2) of the Bail Act 2002.

Particulars of Offence

Joseva Hope Bolawaqatabu, on the 27th of May 2020 at Sigatoka, in the Western Division, whilst being released on bail by Sigatoka Magistrates' Court vide CF 9/20 and CF 10/20, without reasonable cause breached bail conditions by reoffending when ordered by the court to not to reoffend.

3. The summary of facts filed and read over by the state and unequivocally admitted by you states that;

The first named accused is Charles Ravu Nakavulevu (accused), 19 years old student of FNU and resides at Cuvu Village, Sigatoka. The second named accused is Joseva Hope Bolawaqatabu (the juvenile), 15 years old, unemployed and resides at Sigatoka Village.

The complainant is Lalita Thakur (PW 1), 45 years old, Businesswoman and resides at Cuvu, Sigatoka. PW 1 owns the Bula Dairy Shop situated at the junction to the Fijian Resort, Cuvu, Sigatoka.

On the 27th of May, 2020 at about 5.00 pm, PW 1 securely closed her shop, locked it and went home. On the next day, 28th of May 2020 at about 7.15 am, PW 1 went and opened the shop, she noticed that the juice bottles were scattered inside the shop. She further saw the front corner of the shop was broken, that was the entry point that someone had use to break into the shop. PW 1 noticed the following items were missing:

- a) 1 x gross BH 10*
- b) 26 x cigarette lighters*
- c) Box of zic zac wrappers*
- d) Food items*
- e) 4 x sunglasses*
- f) 6 x caps*

All to the total of \$284.50 worth of stolen items.

The matter was reported to Sigatoka Police Station. Upon investigation, it was discovered that on the 27th May, 2020, at about 10.45 pm, at Cuvu Village, Esava Lotawa (PW 2) was sitting around with one Tulai, Tevita, Josateki, Solomon, Jiuta and Henikai, when the accused and the juvenile came and invited them to

the hill top. As they reach the hill top, PW 2 saw one carton full of snacks (cookies and juice). Both accused put the carton and they started to eat. After a while they all left for the village and threw the leftover cookies away. PW 3 did not know that the said items were stolen. PW 2 evidence is confirmed by Marika Karikarilu (PW 3) and Ratu Ilaitia Vonowale (PW 4). They saw two cartons filled with cookies and juice, they ate the snacks and return to the village.

DC 4702 Asaeli Sivo (PW 5) did some enquiry around the Cuvu Village and discovered a blue lighter found on the accused and when he questioned him, he claimed that his mother gave him \$10.00 which he bought a cigarette with the said lighter. When PW 6 further questioned the accused, he admitted that he broke into PW 1's shop with the juvenile and they hid some items 50 meters away from the scene. So PW5 went to recover the items filled in a carton.

Investigation also confirms that the juvenile has a pending Theft case before the Sigatoka Magistrate Court for case reference CF 9/20 and CF 10/20, he was granted bail with conditions and part of his conditions was not to reoffend.

Both accused were arrested and interviewed. The accused in his Record of Interview ("ROI") admits that he went with the juvenile and broke into PW 1's shop (refer to Q & A 28 – 30). He claimed that it was the juvenile's plan to break into the shop. He admits that he forcefully damaged the side wooden partition and let the juvenile enter the shop, whilst he stood outside as the watchman (Q & A 32). He claimed that it took the juvenile 5 minutes to steal from the shop; they packed the items in the carton and followed the tramline towards Cuvu Village. He confirms after hiding the stolen items, he went to the village and invited the village boys to have the biscuits and juice with the BH 10. (Copy of the ROI of the accused attached).

The juvenile was interviewed he also admits breaking into PW 1's shop with the accused and they stole from therein. He confirms that he was the one that went into the shop and stole cookies, juice, BH 10, zig zag wrapper and gas lighters and also admits that he is on bail for a Theft case and has re-offended in this case and he admits that he thought he would not be caught. (Copy of the ROI of the juvenile attached).

4. I find all the alleged counts proved by the said summary of facts, as both of you have unequivocally admitted the above Summary of Facts. Accordingly, I convict

both of you of the two offences of Aggravated Burglary and Theft and the juvenile alone of the 3rd count of Breach of Bail Condition.

5. 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.
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’ of 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. As for section 26 of the Bail Act the 3rd count carries a maximum of 12 months of imprisonment.
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 His Lordship Hon. Justice Perera in **State v Naulu** - [2018] FJHC 548 (25 June 2018), as the said 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).
For the offence of Breach of Bail Condition, the recommended tariff is said to be from a suspended term to a 9 months of imprisonment.
8. The offences that both of 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."

9. The aggravating factors present in common are that this was a pre-planned invasion and the fact that there is much prevalence of this type of offences in the society. This type of offences has increased due to the leniency they are dealt with and the society now demands an unsympathetic and/or stern judicial approach on these types of offences in order to curtail them.
10. The mitigating factors submitted are that they are very young offenders and also are remorseful. The accused is a first time offender. The juvenile has a few pending matters but no previous convictions. However, he has escaped from lawful custody pending the sentencing of this matter. That offence would be dealt separately in due course as for the law. Though I will not consider it to enhance the Juveniles' sentence, it is relevant in deciding the weight of his mitigatory factors.
11. I would select 6 years and 6 and ½ years as the starting points of the accuseds' and the juveniles' aggregate sentences, respectively. I would enhance 1 year due to aggravating factors mentioned above as the aggravating factors were common to both of you. I will deduct 30 months from the term of the accused for the mitigating factors inclusive of the shown remorse and the co-operation with police. I will deduct 28 months from the term of the juvenile in consideration of the submitted mitigatory factors. Now your sentences are an imprisonment terms of;

For the accused - 4 years and 6 months.

For the juvenile - 5 years and 2 months.

12. You have pleaded guilty at the first available opportunity and I will award the maximum possible discount of 1/3 for that. Therefore your final sentences are:
 - For the accused - 3 years of imprisonment. I will fix non parole period at 2 years, as for section 18 of the Sentencing and Penalties Act.
 - For the juvenile - 3 years 5 months and 10 days. I will fix the non parole period at 2 years and 5 months.

13. Both of you have been arrested on the 28th of May 2020. The Accused was granted bail on the 06th of July 2020. That is about 6 weeks. The juvenile has escaped from the juvenile detention center on 30th of October 2020. He was captured but not remanded. That would be about (22) weeks. I deduct that period from your final sentences of which the remainder, you'd have to serve will be;

For the accused - 2 years 10 months and 2 weeks of imprisonment. With a non-parole period of 1 year 10 months and 2 weeks.

For the juvenile - (3-) years of imprisonment with a non-parole period of (2-) years.

14. Taking into consideration the section 26 of the Sentencing and Penalties Act and the fact that the accused is a first time offender, I think it is appropriate to suspend the 34 and ½ months of your imprisonment for a period of 4 years. The consequences of a suspended term will be explained to you by the Court Clerks.

15. As for provisions of the section 30 (3) of the Juveniles Act, a juvenile cannot be imprisoned for more than two years. Therefore, I will confine the sentence of the juvenile to two years of imprisonment with a non-parole period of 12 months. In consideration of the available material I am of the view that it is inappropriate to suspend his term and it is unsafe for him to be released to the society. Therefore, before releasing him back to the society, he should be rehabilitated by the state institutions. He is to be detained and rehabilitated at a Juvenile rehabilitation center.

16. 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, Lautoka.

Solicitors for the Accused : Legal Aid Commission, Lautoka.