

IN THE HIGH COURT OF FIJI
AT LAUTOKA
CRIMINAL JURISDICTION

Criminal Case No: HAC 150 of 2021

STATE

V

K.B.R. AND ERONI MATEMATE

Counsel : Ms. R. Uce for the State.
: Ms. K. Vulimainadave for the Juvenile
and the Accused.
Mr. E. Toutou for and on behalf of the
Social Welfare Department.

Date of Submissions : 25 April, 2022
Date of Punishment Hearing : 25 April, 2022
Date of Punishment/Sentence : 26 April, 2022

PUNISHMENT/SENTENCE

(The name of the Juvenile is suppressed he will be known as "K.B.R")

1. The juvenile and the accused were charged in the Magistrate's Court at Nadi for one count of Aggravated Burglary and one count of Theft.

After the matter was transferred to the High Court, the charge of Aggravated Burglary was reduced to a count of Burglary.

2. The juvenile now faces a count of Burglary and a count of Theft whereas the accused faces a count of Receiving Stolen Property by virtue of the consolidated information filed by the Director of Public Prosecutions dated 2nd March, 2022:

FIRST COUNT

Statement of Offence

BURGLARY: Contrary to section 312 (1) of the Crimes Act 2009.

Particulars of Offence

K.B.R on the 18th day of December, 2021 at Nadi in the Western Division, entered into the dwelling house of CHANDRA DEVI as a trespasser, with intent to commit theft.

SECOND COUNT

Statement of Offence

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

Particulars of Offence

K.B.R on the 18th day of December, 2021 at Nadi in the Western Division, dishonestly appropriated (stole) cash of \$800.00, 1 x Nokia mobile phone, 1 x Samsung J3 mobile and 1 x No. 22 chicken, the property of the CHANDRA DEVI with the intention of permanently depriving CHANDRA DEVI of the said property.

THIRD COUNT

Statement of Offence

RECEIVING STOLEN PROPERTY: Contrary to section 306 (1) of the Crimes Act 2009.

Particulars of Offence

ERONI MATEMATE on the 18th day of December, 2021, at Nadi in the Western Division, dishonestly received stolen property namely cash of \$120.00, 1 x Nokia mobile phone and 1 x no. 22 chicken, knowing or believing the property to be stolen.

3. On 16th March, 2022 the juvenile and the accused in the presence of their counsel pleaded guilty to the above counts. Thereafter on 12th April, 2022 the juvenile and the accused understood and admitted the summary of facts read by the state counsel as follows:

1. *On the 18th of December 2021 the complainant left her house at 8.30 am to do some farming.*

2. *While she was out farming the juvenile who was walking along the road with the accused person saw the complainant's house and inquired with the accused as to whose house it was. The accused had told him that the house belonged to an old lady the juvenile told him to wait there while he went to the complainant's house.*

3. *The juvenile went to the complainant's house and knocked on the front door. When no one answered, he walked to the side of the house, pulled down the mosquito netting, removed two glass louvers and entered the complainant's house as a trespasser with intent to steal.*

4. *When the juvenile had gained access to the complainant's house, he stole the following items:*

- | | |
|------------------------------------------------|-----------------|
| <i>a. Cash of</i> | <i>\$800.00</i> |
| <i>b. 1x Nokia mobile phone valued at</i> | <i>\$ 69.00</i> |
| <i>c. 1x Samsung J3 mobile phone valued at</i> | <i>\$300.00</i> |

d. 1x No. 22 chicken valued at	\$ 24.00
Total amount	<u>\$1,193.00</u>

5. *After stealing from the complainant's house, the juvenile went back to where the accused was and showed the accused items that he had stolen from the complainant's house. As they continued walking, the accused received the following stolen property from the juvenile:*
 - a. *Cash of \$120.00;*
 - b. *1x Nokia mobile phone;*
 - c. *1x No. 22 chicken.*

6. *When the complainant arrived home the same day at around 12pm she saw that her house had been broken into. She then reported the matter to the police.*

7. *Investigations were carried out, the accused and juvenile were arrested in relation to this matter. When the accused was caution interviewed, he denied breaking into the house but admitted to receiving 1x button mobile phone, 1x black charger and 1x white charger, 1x chicken, 4 x packets of smarties and \$120.00 cash from the juvenile. [Q&A 70-71]. Attached is a copy of the caution interview of the accused.*

8. *When the police caution interviewed the juvenile in the presence of social welfare officer, Eroni Toutou, the juvenile admitted that he had broken into the complainant's house [Q&A 67 - 71], stole certain items from the house [Q&A 72-79 and gave the accused a few items that he had stolen [Q&A 81]. Attached is a copy of the caution interview of the juvenile.*

9. *The only property that was recovered after investigations was the black mobile phone.*

4. After considering the summary of facts read out by the state counsel which was admitted by the juvenile and the accused and upon reading their caution interviews dated 19th and 21st December, 2021 this court is satisfied that the juvenile and the accused have entered an unequivocal plea of guilty on their freewill. This court is also satisfied that the juvenile and the accused have fully understood the nature of the charges and the consequences of pleading guilty. The summary of facts also satisfies all the elements of all the offences.
5. In view of the above, this court finds the juvenile guilty as charged for counts one and two. The accused is also found guilty as charged and he is convicted of count three.
6. Both counsel filed helpful sentence and mitigation submissions for which this court is grateful.
7. The two offences for which the juvenile has been found guilty is founded on the same facts hence it is only proper that an aggregate sentence is imposed.
8. Section 17 of the 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. Taking into account section 17 of the Sentencing and Penalties Act I prefer to impose an aggregate sentence of imprisonment for the two offences.
10. The counsel for the juvenile and the accused presented the following personal details and mitigation:

JUVENILE -K.B.R

- a) He was 15 years of age at the time;
- b) Is a first and young offender;
- c) Cooperated with police during investigations;
- d) Pleaded guilty at the earliest opportunity;
- e) Stolen items were partially recovered;
- f) Regrets what he has done and is remorseful;
- g) Apologies to the victim and his father for what he has done;
- h) Takes responsibility for his actions;
- i) Promises never to reoffend.

ACCUSED - ERONI MATEMATE

- a) Is 31 years of age;
- b) Is a Cane Cutter;
- c) First offender;
- d) Pleaded guilty at the earliest opportunity;
- e) Cooperated with the police during investigations;
- f) Stolen items were partially recovered;
- g) Seeks forgiveness from the victim and promises not to reoffend.

TARIFF

11. The maximum penalty for the offence of burglary is 13 years imprisonment. The accepted tariff for this offence is a sentence between 1 year and 3 years imprisonment (*see Viliame Waqavanua vs. State, Criminal Appeal No. HAA 013 of 2011, 6th May, 2011*), *Penaia Ratu vs. State, Criminal Case No. HAA 95 of 2017*).
12. For the offence of the theft the maximum penalty is 10 years imprisonment.
13. The tariff for the offence of theft is settled. In *Mikaele Ratusili v. State, Criminal Appeal no. HAA 011 of 2012 (1 August, 2012)* Madigan J. set out the tariff for theft as follows:
 - (i) *For the 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.*
14. The offence of receiving stolen property under the Crimes Act carries a maximum term of imprisonment of 10 years. The tariff for this offence is between 1 year to 3 years imprisonment (*see Tukei Taura v State, Criminal appeal NO. HAA 103: 104 of 2002 and Ilaitia Turaga v State, Criminal Appeal NO. HAA 82 of 2002*).

AGGRAVATING FEATURES

15. The following aggravating features are obvious:

a) Morning Invasion

It was around 8:30 am the juvenile forcefully entered the house of the victim.

b) Bold and undeterred

The juvenile was bold and undeterred in entering the house of the victim and stealing the items mentioned in the information. The accused was also bold in accepting the items which he knew was stolen from the house of the victim.

c) No regard to property rights of others

The juvenile and the accused had no regard for the property rights of the victim.

d) Prevalence of the offending

It is sad to note that there is an increase in such an offending. People are unable to leave their properties vacant these days.

SOCIAL WELFARE REPORT

16. As per the order of this court the Welfare Officer at the Fiji Juvenile Rehabilitation and Development Centre provided an insight into the behaviour and progress made by the juvenile whilst in detention.

17. The officer Mr. Navneet Kumar in his report mentioned that the juvenile is a hardworking and a trust worthy person who has been able to adjust well to the environment of the centre and has been able to work with the other boys as well.

18. According to the officer, the juvenile is an intelligent young person who can follow rules and regulations, however, he requires adult supervision. The juvenile is remorseful of what he has done.
19. The Social Welfare Department, Nadi conducted a home assessment and interviews before compiling a pre-punishment report for the juvenile. Mr. Toutou in his report has highlighted an important issue that the parenting style implemented by the father of the juvenile was questionable and may not be working.
20. During the hearing, I had also observed that the father of the juvenile was too demanding and strict. It was obvious to me that the father of the juvenile may have an anger problem which needs some attention. This, I suppose may have been a bit too much for the juvenile to handle in the absence of his mother. There is a need for the father of the juvenile to approach the juvenile in a polite and loving manner.
21. I would like to express my thanks to Mr. Toutou for a frank, honest and objective assessment mentioned in the home visitation and interview of the juvenile's father.
22. The Social Welfare Department recommends the following for the juvenile that:
 - a) *The juvenile be given a chance for rehabilitation;*
 - b) *The juvenile to attend counseling;*
 - c) *The parent to sign a good behaviour bond;*
 - d) *The need for more parental guidance.*

PARENTAL SUPPORT

23. The father of the juvenile was in court. He accepts responsibility for the actions of his son and has pledged his support, guidance and supervision. The father of the juvenile has assured the court that he will play a more active role in the life of his son.
24. The juvenile also takes responsibility of his actions, he is remorseful and he promises not to be in conflict with the law again. The juvenile told the court that he wishes to pursue vocational studies and his father is happy to support him. The father of the juvenile stated that his son was a good and intelligent boy who had to change his mind set about what he should be doing.
25. The father of the juvenile as part of his commitment agreed to be bonded in respect of the good behaviour of the juvenile in the sum of \$500.00 and is willing to compensate the victim in the sum of \$800.00 within 3 months.
26. Considering the objective seriousness of the offending, I select 12 months imprisonment as the aggregate sentence for both the offences (lower range of the tariff). The sentence is increased for the aggravating factors and decreased for mitigation, early guilty plea, good character and the remand period of 4 months and 4 days.
27. The final aggregate sentence for the two offences is 18 months imprisonment. Under section 26 (2) of the sentencing and penalties Act this court has a discretion to suspend the final sentence since it does not exceed 3 years imprisonment.
28. In *State vs. Alipate Sorovanalagi and others*, Revisional Case No. HAR 006 of 2012 (31 May 2012), Goundar J. reiterated the following

guidelines in respect of suspension of a sentence at paragraphs 22 and 23:

"[22] I accept that the Magistrates' Court has discretion to suspend a sentence if the final term imposed is 2 years or less. But that discretion must be exercised judiciously, after identifying special reason to suspend the sentence. The special reason can vary depending on the facts of each case.

*[23] In **DPP v Jolame Pita** (1974) 20 FLR 5, Grant Actg CJ (as he then was) held that in order to justify the imposition of a suspended sentence, there must be factors rendering immediate imprisonment inappropriate. In that case, Grant Actg CJ was concerned about the number of instances where suspended sentences were imposed by the Magistrates' Court and those sentences could have been perceived by the public as 'having got away with it'. Because of those concerns, Grant Actg CJ laid down guidelines for imposing suspended sentence at p.7:*

"Once a court has reached the decision that a sentence of imprisonment is warranted there must be special circumstances to justify a suspension, such as an offender of comparatively good character who is not considered suitable for, or in need of probation, and who commits a relatively isolated offence of a moderately serious nature, but not involving violence. Or there may be other cogent reasons such as the extreme youth or age of the offender, or the circumstances of the offence as, for example, the misappropriation of a modest sum not involving a breach of trust, or the commission of some other isolated offence of dishonesty particularly where the offender has not undergone a previous sentence of imprisonment in the relevant past. These examples are not to be taken as either inclusive or exclusive, as sentence depends in each case on the particular circumstances of the offence and the offender, but they are intended to illustrate that, to justify the

suspension of a sentence of imprisonment, there must be factors rendering immediate imprisonment inappropriate."

29. The following relevant special circumstances or special reasons for the suspension of the imprisonment term in my view needs to be weighed in choosing an immediate imprisonment term or a suspended punishment.
30. The juvenile is a young person as per the Juveniles Act, he is of good character, isolated offences were committed by him, he was 15 years of age at the time of the offending, pleaded guilty at the earliest opportunity, is genuinely remorseful, cooperated with police leading to minimum recovery of stolen items and he takes full responsibility of his actions. These special reasons render an immediate imprisonment term inappropriate.
31. I am sure the juvenile with parental and family guidance, supervision and support has a bright future ahead of him hence an imprisonment term will not augur well for his future, the juvenile has been in police custody and/or at the Fiji Juvenile and Development Centre which is in itself an adequate and appropriate punishment, an experience that will remind him to keep away from conflict with the law. This court has taken into account rehabilitation over and above retribution.
32. Having considered section 4 (1) of the Sentencing and Penalties Act this court is of the view that this punishment is just in all the circumstances of the case.
33. The only reason why the punishment is lenient is because section 30 (3) of the Juveniles Act imposes a limit on the punishment of young persons.

34. In summary the juvenile is given a punishment of 1 year and 6 months imprisonment as an aggregate punishment for both the offences which is suspended for 3 years. The effect of suspended sentence is explained. The following orders are to take effect immediately.

ORDERS


- a) The juvenile is given a punishment of 1 year and 6 months imprisonment as an aggregate punishment for the two counts mentioned in the information which is suspended for 3 years with immediate effect;
- b) The juvenile is put under probation of the Social Welfare Department for two years;
- c) The father of the juvenile is to sign a good behaviour bond on behalf of the juvenile in the sum of \$500.00. Furthermore, the father of the juvenile is to pay the victim compensation of \$800.00 payable at the Lautoka Magistrate's Court within 3 months from today;
- d) The Social Welfare Department is to immediately arrange for the counseling of the juvenile in the presence of his father with the view of assisting him in keeping out of peer group influence and to engage in education and training;
- e) The Social Welfare Department is also at liberty to work out any plans or programs that will be in the interest of the juvenile.
- f) It is the responsibility of the father of the juvenile to ensure that the juvenile obeys any directions given by the Social Welfare Department;

- g) The Social Welfare Department is to provide assistance/support/counseling to the father of the juvenile in improving his parenting skills towards the juvenile;
- h) A copy of this punishment is to be served on the Officer in Charge of the Social Welfare Department.

ACCUSED

- 35. Considering the objective seriousness of the offence committed I select 12 months imprisonment (lower range) of the sentence. The sentence is increased for the aggravating factors and reduced for the early guilty plea, mitigation, good character, genuine remorse and the remand period of 4 months and 6 days.
- 36. The final sentence for one count of receiving stolen property is 2 years imprisonment. Under section 26 (2) (a) of the Sentencing and Penalties Act this court has a discretion to suspend the final sentence since it does not exceed 3 years imprisonment.
- 37. The accused is a first offender of comparatively good character, isolated offence committed, he was 31 years of age at the time, pleaded guilty at the earliest opportunity, was remorseful, cooperated with police and takes responsibility for his actions. I consider these special reasons rendering an immediate imprisonment term inappropriate.
- 38. The accused has been in remand for 4 months and 6 days which is in itself an adequate and appropriate punishment, an experience that will remind him of his misdeeds and act as a motivation to keep away from trouble. This court has taken rehabilitation over and above retribution.

39. In summary the accused is sentenced to 2 years imprisonment which is suspended for 3 years. The effect of suspended sentence is explained to the accused.
40. Both the juvenile and the accused have 30 days to appeal to the court of Appeal.


Sunil Sharma
Judge



At Lautoka

26 April, 2022

Solicitors

Office of the Director of Public Prosecutions for the State.

Office of the Legal Aid Commission for the Accused.