



*Particulars of Offence*

**MALAKAI CIRIKIDAVETA and ALIVERETI TAGIVETAUA** with another, on the 21<sup>st</sup> day of March, 2022, at Narere in the Southern Division, in the company of each other, entered as trespassers into the property of **SHENAL SHIVNEET KUMAR**, with the intention to commit theft.

**COUNT 2**

*Statement of Offence*

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

*Particulars of Offence*


**MALAKAI CIRIKIDAVETA and ALIVERETI TAGIVETAUA** with another, on the 21<sup>st</sup> day of March, 2022, at Narere in the Southern Division, in the company of each other, dishonestly appropriated (stole) 1 x Total branded colour green circular saw, 1 x Total branded colour green grinder, 1 x Inco branded cordless drill and 1 x Samsung tablet colour white belonging to **SHENAL SHIVNEET KUMAR**, with the intention of permanently depriving **SHENAL SHIVNEET KUMAR** of the said properties.

2. Satisfied that you have fully comprehended the legal effect of your plea and that your plea was voluntary and free from influence, I now convict you of these offences of Aggravated Burglary and Theft.
3. According to the summary of facts you admitted in open Court, you had committed this crime with two other accomplices. One of your accomplices had entered the Complainant's house and handed over the stolen items, which you had packed in a white sack. You then took the stolen items to your grandmother's house.

4. This is breaking into a dwelling house and stealing therein while the occupants were away. You broke into this house while the owner was away. The crimes of this nature, targeting the dwelling houses, undoubtedly affect the entire community. You have instilled fear and insecurity among the people by committing this crime. I, accordingly, find this is a severe offence.
5. Having considered the serious nature of these offences, I now proceed to determine an appropriate sentence for you in line with general principles, objectives, and purposes of sentencing as stated under sections 4 (1) and 4 (2) and 15 of the Sentencing and Penalties Act.
6. These two offences are founded on the same series of offences. Therefore, I find it is appropriate to impose an aggregate sentence pursuant to Section 17 of the Sentencing and Penalties Act.
7. The tariff for the offence of Aggravated Burglary is between 18 months to 3 years. The tariff for the offence of Theft has been stipulated in Ratusili v State [2012] FJHC 1249; HAA011.2012 (1 August 2012), where Justice Madigan held that:
  - 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.*

8. Considering the nature of the items you have stolen and the manner in which you entered the premises, I find the level of culpability and the harm is high in this offence.
9. You are a young first offender. You pleaded guilty to these offences at the first available opportunity. Moreover, you admitted your responsibilities for committing these offences in your caution interview. In doing that, you have expressed and shown your remorse and repented for committing this crime. Therefore, you are entitled to a substantial discount for your early plea of guilty and previous good character.
10. Considering the above reasons, I sentence you to 24 months imprisonment as an aggregated sentence for these two counts as charged. Your sentence is partially suspended, where you shall serve 12 months of your sentence instantly, and the remaining 12 months are suspended for three years. Considering the time spent in custody (nearly two months), I consider two (02) months as a period of imprisonment that you have already served. Accordingly, the actual period you have to serve in custody is ten (10) months imprisonment.
11. If you commit any crime during three (3) years and are found guilty by the Court, you are liable to be charged and prosecuted for an offence according to Section 28 of the Sentencing and Penalties Act.
12. Thirty (30) days to appeal to the Fiji Court of Appeal.



  
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Hon. Mr. Justice R.D.R.T. Rajasinghe

At Suva

22<sup>nd</sup> July 2022

Solicitors

Office of the Director of Public Prosecutions for the State.

Office of the Legal Aid Commission for the Accused.