

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

**CRIMINAL CASE NO. HAC 222 OF 2022**

**BETWEEN** : STATE

**AND** : MAKIPANI GONELEVU  
SAMUELA NAWAITABU

**Counsel** : Ms A Devi for the State  
Mr M Young for both Accused

**Date of Hearing** : 2 November 2022

**Date of Sentence** : 10 November 2022

**SENTENCE**

- [1] Both accused have pleaded guilty to one count of aggravated burglary and one count of theft. Both offences form part of the same transaction.
- [2] The facts are that on 30 April 2022, the complainant left his home in Davuilevu for work. The complainant is a 45 year old male who at the time worked as a panel beater in Nausori. Later that day the complainant's spouse and daughter also left their home for Suva. Both accused gained entry to the house through the door and removed a smart TV, a Tapa cloth and a headphone. The total value of the items stolen was \$775.00. They sold the TV and used the money for drinks.
- [3] The two accused were arrested on or about 23 May 2022. Both confessed to burglary and theft under caution.
- [4] The serious offence is burglary. The statutory aggravation is that two people acted together to commit the offence. The maximum penalty prescribed for aggravated

burglary is 17 years imprisonment. The tariff is between 18 months to 3 years imprisonment for a single offence of aggravated burglary (*Leqavuni v State* [2016] FJCA 31; AAU0106.2014 (26 February 2016)).

[5] In *State v Takalaibau* - Sentence [2018] FJHC 505; HAC154.2018 (15 June 2018) the Court took the view that burglary of home must be considered a serious offence for the following reasons:

[10] 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.”

- [6] In this case, there was no damage done to the property. The house was not ransacked. The intrusion took place during daytime when nobody was inside the house. The TV had been recovered and restored to the owner. Further, after pleading guilty, both accused paid a restitution in the sum of \$295.00 to the complainant for the unrecovered property.
- [7] Gonelevu is 24 years old while Nawaitabu is 20 years old. Both are unemployed and reside in the same suburb as the complainant. At the time of the offending, both had previous good character. Both have pleaded guilty and have saved court’s time and resources. They also confessed their crime to police and offered information that led to the recovery of the stolen TV. They paid full restitution before sentencing. They may be contrite but I question the genuineness of their remorse.
- [8] Both accused committed a spate of burglary around the same period as the burglary in the present case. They appeared before different courts and pleaded guilty to the charges and secured suspended sentences in HAC 186/22, HAC 179/22 and HAC 219/22. It is after a suspended sentence was imposed that both accused were inadvertently released despite an order by this Court to remand them in this case. To their credit they voluntarily appeared in court on 30 September 2022 and pleaded guilty to the charges. Both were then remanded in custody for sentencing. The previous remand period had been taken into account

in HAC 179 of 2022. I consider one month downward adjustment to the sentence to reflect the pre-sentencing remand period is appropriate.

[9] The mitigating factors are their guilty pleas, previous good character (reference from church pastor), cooperation with police, recovery of stolen property and payment of restitution. Apart from the statutory aggravation, the only other aggravating factor is that the offenders burgled a dwelling home.

[10] After taking all these factors into account, I consider an aggregate sentence of 18 months imprisonment is appropriate. Suspension is not appropriate. Both accused committed a spate of burglary. The need for special and general deterrence outweighs the need for rehabilitation. The fact that they are young and first-time offenders count for little when they have engaged in antisocial behaviour involving invasion of homes and privacy of people.

[11] Both accused are convicted and sentenced to an aggregate sentence of 18 months imprisonment for aggravated burglary and theft. I exercise my discretion not to fix a non-parole period to give both accused an opportunity to rehabilitate in prison and secure remission of sentence.



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**Hon. Mr Justice Daniel Goundar**

**Solicitors:**

Office of the Director of Public Prosecutions for the State

Mathews Law for both Accused