

IN THE HIGH COURT OF FIJI
AT LAUTOKA
CRIMINAL JURISDICTION

CIMINAL CASE NO: HAC 18 OF 2023

STATE

vs.

JP

TV

AT

Counsel: Ms S Prakash for State
Ms K Vulimainadave for JP
Ms Priyanka for TV
Mr A Barinisavu for AT

Date of Sentence Hearing: 06 September 2024

Date of Sentence/Punishment: 11 September 2024

(The names of the Juveniles are suppressed as they were children at the time of the offence)

PUNISHMENT

1. JP, TV, AT (Juveniles) were charged with one count of Aggravated Burglary and one count of Theft on the following information:

FIRST COUNT

Statement of Offence

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

Particulars of Offence

JP, TV and AT on the 4th day of December 2022, at Matanagata, Vatukoula in the Western Division, entered into the premises of SHALEND'S RETAIL as trespassers, with the intent to commit theft.

COUNT 2

Statement of Offence

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

Particulars of Offence

JP, TV and AT on the 4th day of December, 2022 at Matanagata, Vatukoula in the Western Division, dishonestly appropriated (stole) 8 x BH10 cigarettes and cash in the sum of \$2630.00, the property of SHALEND'S RETAIL, with the intention of permanently depriving SHALEND'S RETAIL of the said properties.

2. They pleaded guilty to the aforesaid counts voluntarily and unequivocally. All of them were represented by a Counsel of the Legal Aid Commission when the pleas were entered.
3. They admitted the following summary of fact read in Court.
 - I. The 1st Juvenile in this matter is JP (hereinafter referred to as "1st juvenile"), who was 15 years old unemployed of Matanagata, Vatukoula at the time of the offence.
 - II. The 2nd Juvenile in this matter is TV (hereinafter referred to as "2nd juvenile"), who was 17 years old unemployed of Matanagata, Vatukoula at the time of the Offence.

- III. The 3rd juvenile in this matter is AT (hereinafter referred to as “3rd juvenile”), who was 16 years old unemployed of Matanagata, Vatukoula at the time of the Offence.
- IV. The complainant in this matter is Shivneel Shiva Naicker (hereinafter referred to as “complainant”), who was 29 years old shopkeeper of Matanagata, Vatukoula at the material time.
- V. The complainant is the shopkeeper of Shalend’s Retail (hereinafter referred to as “the shop”) situated at Matanagata, Vatukoula and resides in the house attached to the shop.
- VI. On the 4th December 2022, the complainant was operating the shop as usual and at around 9 pm he went to the washroom leaving the store unattended for a while.
- VII. The washroom is about 15 meters from the shop and the complainant forgot to lock the padlock on the grill door into the shop before leaving for the washroom.
- VIII. When the complainant was away in the washroom, the three juveniles came to the shop to buy suki.
- IX. The three juveniles saw that the shop was unattended and the padlock was open so they quickly planned to steal from the shop.
- X. The 2nd juvenile entered the shop to steal whilst the 1st juvenile stood just outside the shop and the 3rd juvenile stood opposite the shop to keep a watch.

- XI. The 2nd juvenile stole one plastic container consisting of sale money and two “kopiko” bottle also consisting of sale money which had gas, recharge and BH10 sale money kept separately in each container.
- XII. The total sum stolen by the three juvenile was \$2,630 cash and 8 BH10 packets of cigarette. The three juveniles then distributed the same amongst themselves.
- XIII. The complainant returned to the shop counter when he saw two iTaukei boys (one was wearing red t-shirt and black shorts and the other was wearing black jacket and black shorts) running away from the shop and he realized that there was a burglary at the shop.
- XIV. The complainant ran towards them but they disappeared into the cassava patch, so he returned to the shop and called the police to report the matter.
- XV. Later, the three juveniles were arrested as suspects and upon executing a search, recoveries were made from each juvenile. Attached herein are the search lists for each juvenile showing the recoveries made from each one of them.
- XVI. Total recoveries made in this matter were in the sum of Nine hundred eighty-nine dollars and five cents (\$989.05).
- XVII. The three juveniles were later caution interviewed whereby they all admitted to the offence. Attached herein are the caution interviews of each juvenile.
- XVIII. All three juveniles were subsequently charged for 1 count of Aggravated Burglary contrary to section 313 (1) (a) of Crimes Act 2009 and 1 count of theft contrary to section 291 (1) of Crimes Act 2009, they pleaded guilty to the offence.

4. The facts admitted by the Juveniles satisfy all the elements of Aggravated Burglary and Theft. I find the Juveniles guilty of Aggravated Burglary and Theft as charged.
5. This Court adjourned the matter for plea in mitigation, sentencing hearing and to receive reports from the Social Welfare Officer in respect of each Juvenile. Plea in mitigation was filed by the Legal Aid counsel and reports by the Social Welfare Officer. The State filed a sentencing submission. I considered all those submissions and the reports.
6. In selecting the sentences that are best suited to the offenders, the courts must have regard to the proportionality principle enshrined in the Constitution, the Sentencing principles in the Penalties Act 2009 (SPA), the maximum penalty prescribed for the offence, the current sentencing practice and the applicable guidelines issued by the courts. Considering the seriousness of the offence and the harm caused to the victims, the final sentence should be determined after making appropriate adjustments for the aggravating and mitigating circumstances.
7. Burglaries are on the rise in Fiji. The courts have emphasised that the increasing prevalence of these offences in our community calls for deterrent punishments. However, the first and young offenders must be given an opportunity to rehabilitate themselves.
8. The offence of Aggravated Burglary carries a maximum sentence of 17 years imprisonment. The sentencing tariff and the sentencing guidelines for Aggravated Burglary were settled by the Court of Appeal in State v Kumar & Vakatawa AAU 33 of 2018 & AAU 117 of 2019 (24 November 2022). Accordingly, the sentencing tariff for Aggravated Burglaries with low level harm category ranges from 1-5 years' imprisonment. The maximum sentence for Theft is 10 years' imprisonment. The tariff ranges from 4 months to 3 years imprisonment (Waga v State [2015] FJHC 72 (5 October 2015)).
9. According to Section 17 of the Sentencing and Penalties Act 2009, 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 has the discretion to impose an aggregate sentence

of imprisonment in respect of those offences. This is a fit case to impose an aggregate sentence for each offender.

10. The value of money and property stolen from the victim's shop was not that high. No physical harm was caused either to property or person during the burglary. No violence or weapon was used. It was an opportunistic theft. In view of that, low level of culpability which carries a starting point of 01 year imprisonment with a sentencing range of 01 -05 years' imprisonment is suited for the offences of this nature according to Kumar & Vakatawa Guidelines.
11. The juveniles were young persons in the age range of 14-18 years at the time of the offence. Accordingly, they should be classified as juveniles by virtue of Section 57 of the Corrections Services Act 2006 which has amended Section 2 of the Juveniles Act. The Corrections Services Act 2006 defines a juvenile to be a person who has not attained the age of 18 years, including a child and a young person.
12. Section 30(3) of the Juveniles Act provides that a young person shall not be ordered to be imprisoned for more than two years for any offence. Section 32 (1) and (2) further provides how to deal with juvenile offenders as follows:

32 (1) Where a **juvenile** is tried for an offence and the court is satisfied of his guilt, the court shall take into consideration the manner in which, under the provisions of this or any other written law, the case should be dealt with, namely-

- (a) by discharging the offender under section 44 of the Penal Code;
- (b) by ordering the offender to pay a fine, compensation or costs;
- (c) by ordering the parent or guardian of an offender to pay a fine, compensation or costs;
- (d) by ordering the parent or guardian of the offender to give security for the good behaviour of the offender;
- (e) by making a care order in respect of the offender;
- (f) by making a probation order in respect of the offender;
- (g) where the offender is a young person, by ordering him to be imprisoned;
- (h) by dealing with the case in any other lawful manner.

13. However, nothing in Section 32 of the Juveniles Act in any way restricts the power of the court to make any order or combination of orders which it is empowered to make under the Juvenile Act or any other written law except corporal punishment.

The sentence for JP (1st Juvenile)

14. Although JP is now an adult, he was 16 years of age at the time of the offence. He is single and he lives with his parents. He admitted responsibility at the caution interview and pleaded guilty to the charge at the first available opportunity. By pleading guilty he saved time and resources of this Court. He has cooperated with police investigations. Part of the stolen money was recovered. He has nil previous convictions. I accept JP is genuinely remorseful.
15. I select a starting point of 5 years' imprisonment from the bottom end of the tariff. There are no aggravating features. I deduct 2 years for the early guilty plea and 10 months for other mitigating factors. He was detained in Boys Centre for 2 months. A period of two months is deducted to arrive at a final sentence of 2 years imprisonment.
16. Since the final sentence is below three years, I considered if JP should be handed down a suspended sentence. He is qualified to be considered for rehabilitation as a young and first offender who has expressed genuine remorse. Therefore, he deserves a full suspended sentence.

The sentence for TV (2nd Juvenile)

17. TV was 17 years of age at the time of the offence. He admitted responsibility at the caution interview and pleaded guilty to the charge at the first available opportunity. By pleading guilty he saved time and resources of this Court. He has cooperated with police investigations. Part of the stolen money was recovered. He has nil previous convictions. I accept TV is genuinely remorseful.


18. I select a starting point of 5 years' imprisonment from the bottom end of the tariff. There are no aggravating features. I deduct 2 years for the early guilty plea and one year for other mitigating factors to arrive at a final sentence of 2 years imprisonment.
19. Since the final sentence is below three years, I considered his suitability for a suspended sentence. He is young and a first offender who has expressed genuine remorse. He is qualified to be considered for rehabilitation. Therefore, he deserves a full suspended sentence.

The Punishment for AT (3rd Juvenile)

20. AT was 15 years of age at the time of the offence. He resides with his father and step mother. He was attending school at Year 10. He admitted responsibility at the caution interview and pleaded guilty to the charge at the first available opportunity. I accept that AT is genuinely remorseful. He has cooperated with the police. He saved time and resources of this Court. The stolen money was partially recovered.
21. I select a starting point of 5 years' imprisonment from the bottom end of the tariff. There are no aggravating features. I deduct 2 years for the early guilty plea and one year for other mitigating factors to arrive at a final sentence of 2 years imprisonment.
22. Since the final sentence is below three years, I considered his suitability for a suspended sentence. AT is young and a first offender who has expressed genuine remorse. He is qualified to be considered for rehabilitation. Therefore, he deserves a full suspended sentence.
23. The following Orders are made:
 - i. JP (1st Juvenile) is sentenced to two (2) years imprisonment to be suspended for a period of three (3) years.

- ii. TV (2nd Juvenile) is sentenced to two (2) years imprisonment to be suspended for a period of three (3) years.
 - iii. AT (3rd Juvenile) is sentenced to two (2) years imprisonment. The sentence is fully suspended for a period of three (3) years.
24. The consequence of the suspended sentence is explained to the juveniles.
25. 30 days to appeal to the Court of Appeal.




Aruna Aluthge
Judge

11 September 2024
At Lautoka

Solicitors:

Office of the Director of Public Prosecution for Prosecution

Legal Aid Commission for Offenders