

IN THE HIGH COURT OF FIJI
AT LABASA
CRIMINAL JURISDICTION

Criminal Case No.: HAC 43 of 2024

STATE

V

GEORGE VUSONIMEKULA TAMANILATUI

Counsel : Mr T Tuenuku for the State
: Ms S Devi for the Accused

Date of Hearing : 8 November 2024
Date of Sentence : 19 November 2024

SENTENCE

1. On 16 July 2024, Mr Tamanilatui (“the offender”) pleaded guilty to a single count of attempt to commit arson contrary to section 363(b) of the Crimes Act 2009.
2. On 9 October 2024, the offender was read and explained the Summary of Facts in the English language which he understood and admitted.
3. The facts can be shortly stated. On the morning of 11 April 2024, the offender got into a heated argument with his sister, with whom he resided in his mother’s house at Nacereyaga, Seaqaqa together with his mother and his 3 children. The offender said that he would burn the house down and proceeded to pour kerosene inside and around the house. He then set fire to a piece of paper and threw it on a tarpaulin inside the sitting room.

4. The tarpaulin caught fire and, in fear, the offender's mother, sister and children ran out of the house. His 16 year old daughter and 18 year old son ran back inside and managed to stop the flames from spreading.
5. The offender was arrested and admitted the offence under caution.
6. I am satisfied that the offender's plea was informed, voluntary and unequivocal. The Summary of Facts satisfies all the elements of the offence of attempt to commit arson. I find him guilty and convict him accordingly.
7. The prosecution and defence have filed helpful sentencing submissions for which I am grateful. I have also heard oral submissions and have taken all the matters advanced by the parties into consideration.
8. The maximum penalty for the offence of attempt to commit arson is 14 years' imprisonment
9. There is no applicable guideline judgment for this offence, and the decided cases brought to my attention suggest there is no settled sentencing practice.
10. In this case, the offender attempted to set fire to his family home knowing that family members, including his children, were inside. In doing so, he displayed a quite shocking disregard for the safety and wellbeing of his family members and caused them significant fear and distress.
11. The potential harm resulting from the offender's actions was a family tragedy and, were it not for the swift action of his children, the family home may well have been destroyed.
12. In all the circumstances of this case, including the use of an accelerant and the clear risk to life, I consider that the appropriate sentence to reflect the objective seriousness of his offending is a term of imprisonment of 5 years. The fact that the offender acted in anger does not reduce his responsibility for his inexcusable conduct.
13. Defence counsel has advanced a number of mitigating factors.

14. At the age of 42 years, the offender is a man of effective good character. I reduce his sentence to one of 4 years' imprisonment to reflect that.
15. The offender's best mitigation, of course, is that he pleaded guilty at the earliest opportunity.
16. Whilst it would be fair to say that the prosecution case against the offender was very strong, I am prepared to accept that his early plea of guilty reflects genuine remorse.
17. Mr Tamanilatui, by pleading guilty at the earliest opportunity you have saved the court's time and resources. This is an important consideration quite separate from the question of whether your early guilty plea reflects your genuine remorse.
18. In all the circumstances of this case, I consider that your early guilty plea warrants a reduction of one - third, resulting in a final sentence of 32 months' imprisonment. In my view, this represents the shortest term commensurate with the seriousness of your offending.
19. I fix your non-parole period at 22 months, which I consider to be appropriate to reflect your reasonable prospects of rehabilitation.
20. You were in custody pending the disposal of this matter from 15 April 2024 to 16 July 2024, totalling about 13 weeks, which is to be regarded as a period of imprisonment that you have already served.
21. Accordingly, the remaining time you must serve before being eligible to be released on parole is 18 months' and 3 weeks imprisonment, which I round down to 18 months' imprisonment.
22. Your counsel urged me to wholly suspend your sentence of imprisonment and has brought to my attention three relatively recently decided cases in which the sentencing court considered it appropriate to wholly suspend sentences of imprisonment for the offence of attempt to commit arson.

23. It is important that you should appreciate that sentencing is always fact-specific, and no two cases are the same. Just because the court decided to impose a suspended sentence in other similar cases does not mean that it would be unjust for me to decide that it is not appropriate to suspend your sentence in the particular circumstances of this case.
24. Having given careful consideration to whether it would be appropriate to suspend your sentence, I have decided that, notwithstanding your reasonable prospects of rehabilitation, only a sentence of immediate imprisonment would meet the principal objectives of this sentence, which are to punish you in a manner which is just in all the circumstances, to deter others from committing offences similar to your offence, and to signify that the court and the community denounce the commission of such offences.
25. In short, appropriate punishment in this case can only be achieved by immediate custody.
26. Mr Tamanilatui, for the reasons I have explained, the sentence I impose is 32 months' imprisonment, less the time you have already served on remand. Your non-parole period is 18 months' from today.
27. You may appeal to the Court of Appeal within 30 days should you choose to do so.




Mr. Justice Burney

At Labasa

19 November, 2024

Solicitors

**Office of the Director of Public Prosecutions for the State
Office of the Legal Aid Commission for the Accused**