

IN THE MAGISTRATES' COURT OF FIJI AT TAVUA
CRIMINAL JURISDICTION

Criminal Case No: 291 - 2017

STATE

-v-

VOLIVOLI LALA SEMANAVANUA

Before : RM Lisiate Fotofili
For Prosecution : WPC Chand A. [Police Prosecution]
Accused : In Person, Waived Right To Counsel
Date of Sentence : 16th July 2019

SENTENCE

BACKGROUND

1. **VOLIVOLI LALA SEMANAVANUA**, you have pleaded guilty to the following charge:

Statement of Offence

CRIMINAL TRESPASS: Contrary to section 387 (1) of the *Crimes Act of 2009*.

Particulars of Offence

VOLIVOLI LALA SEMANAVANUA on the 18th day of November, 2017 at Nasivi, Vatukoula in the Western Division unlawfully entered the house of **Glen Prout** with intent to commit an offence from the said **Glen Prout**.

2. I am satisfied that your guilty plea to the charge is voluntary and that you understand the consequence of your plea. Your admission in court and the evidence tendered in support of your plea, supports your guilty plea. There is evidence that you were drinking but I do not accept that you were so intoxicated to the extent that you did not know what you were doing. I enter finding of guilt against you and I convict you accordingly.
3. Although the prosecution has not specified in the charge, which part of section 387 (1) of the **Crimes Act 2009** they are proceeding with, it is apparent from the facts, your admission in court and your answers in your police caution interview that

it is 387 (1) (a) with the intention to commit an offence that is the substance of the allegation.

4. The defendant entered the victim's house by climbing through a bedroom window. The victim did not consent. The defendant went and lay down beside the victim's 2 daughters (exact ages unknown). When the daughters woke up, the defendant stood up and went outside the house without saying a word.
5. After the matter was reported, the defendant was arrested and interviewed by police. The defendant admitted that the victim is his neighbour. The defendant said that he was drinking grog until about midnight. He then drank spirit and then rum. He then went to the victim's house intending to steal as the defendant understood that the victim was their treasurer and had money. The defendant entered the house through a bedroom window. The victim's mother was sleeping in the room at the time and did not notice the defendant. The defendant heard the victim's mother moving and he went and lay down beside the 2 girls who were sleeping in the sitting room to hide. The defendant pulled their blanket to help cover himself. The defendant denied attempting to ' touch ' the girls or undress them. The defendant said that they were young. He said that they woke up and he called one of the girl's name to keep them from talking.
6. You are a first offender.
7. You have not spent any time in remand.
8. In your mitigation you are 30 years old. You said that you were really drunk. You wanted money. You are a miner. You have parents to look after. You say that your mother is blind.

LAW

9. The maximum sentence that is imposable by law for the offence of criminal trespass can be up to 3 months imprisonment. If for example, the offence was committed in a building used as a human dwelling such as a home, then the maximum a court can impose is up to 1 year imprisonment.

TARIFF

10. Sentences between 4 months to 9 months imprisonment maybe appropriate [The State v Basilio Nukumate HAC 184 of 2010 (4th February 2011)].

STARTING POINT

11. Considering the objective seriousness of the offence, a 5 month imprisonment term is selected as a starting point.
12. This circumstance of the case strongly reflects an attempted burglary although the defendant is charged with criminal trespass.

AGGRAVATING FEATURES

13. This was your neighbour.
14. You were drunk.
15. This was early in the morning.
16. Although the girls ages are not specified, I have no trouble accepting that they were young. This is in addition to their grandmother whose bedroom window you entered through. There were vulnerable members of the victim's family present at home.
17. Your presence at their home was potentially dangerous and could have escalated to actual violence or some other serious offence.
18. Your sentence is increased to 10 months imprisonment.

MITIGATION

19. Having heard you, I do not accept that you are truly remorseful.
20. You have cooperated with police during your interview though.
21. You will get some reduction for having a past good history.
22. You have your elderly parents to look after.
23. Your sentence is reduced to 7 months imprisonment.

GUILTY PLEA

24. I accept that your guilty plea is early and I will reduce your sentence to 4 months and 2 weeks imprisonment.

SUSPENSION

25. I can suspend your imprisonment term either in whole or in part pursuant to section 26 (1) and (2) (b) of the Sentencing and Penalties Act 2009.
26. I also take into account the factors outlined in section 4 of the Sentencing and Penalties Act 2009 when deciding whether or not to suspend your sentence.
27. Your sentence will be aimed at deterrence and to punish you adequately.

SENTENCE

28. Your sentence is 4 months and 2 weeks imprisonment.
29. Your sentence will not be deducted any further as you did not spend any time in remand.
30. I will suspend 3 months imprisonment for the next 3 years.
31. You commit any other offence punishable with imprisonment in the next 3 years, this 3 months imprisonment term held in waiting maybe activated.
32. You will serve 1 month and 2 weeks imprisonment immediately.
33. I am not satisfied that there is any need for a domestic violence order [DVRO] as apart from the fact that you and the victim are neighbours, there is no other evidence from which I can draw the conclusion that your relationship is so close that would warrant a DVRO.
34. 28 days to appeal.



Dated at Tavua this 16th day of July, 2019


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Lisiata T.V. Fotofili
Resident Magistrate