

**IN THE HIGH COURT OF FIJI**

**AT SUVA**

**APPELLATE JURISDICTION**

**CRIMINAL APPEAL CASE NO. HAA 024 OF 2013S**

**BETWEEN**

**MARTIN REGINALD SEBASTIAN SINGH**

**APPELLANT**

**AND**

**THE STATE**

**RESPONDENT**

**Counsels** : **Mr. P. Katia for Appellant**  
**Ms. J. Fatiaki for Respondent**

**Hearing** : **19 August, 2013**

**Judgment** : **21 March, 2014**

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**JUDGMENT**

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1. On 11 April, 2013, the appellant (accused), in the presence of his counsel, appeared in the Suva Magistrate Court, and pleaded guilty to the following charges:

**FIRST COUNT**

**Statement of Offence**

**BURGLARY:** *Contrary to section 312 (1) of the Crimes Decree No. 44 of 2009.*

**Particulars of Offence**

**MARTIN REGINALD SEBASTIAN SINGH**, on 7 day of March, 2013 at Suva in the Central Division, broke and entered into **Tappoo City Bookmark [Vodafone]** as a trespasser with intent to steal from therein.

**SECOND COUNT**

**Statement of Offence**

**THEFT:** *Contrary to section 291 (1) of the Crimes Decree Number 44 of 2009.*

#### **Particulars of Offence**

**MARTIN REGINALD SEBASTIAN SINGH**, on the 7 day of March, 2013 at Suva in the Central Division, dishonestly appropriated [stole] 1 x Samsung Galaxy SII Handset valued at \$1,499.00, 1 x Samsung Galaxy Duos valued at \$998.00, 1 x Samsung Galaxy Beam valued at \$1,299.99, 2 x ZTE Racer Handset valued at \$478.00, 3 x Nokia 306 Handset valued at \$717.00, 1 x Vodafone Chat 655 Handset valued at \$189.00, 2 x ZTE Kis Lite valued at \$398.00, 1 x ZTE Blade 3 Handset valued at \$249.00, 1 x HTC One Handset valued at \$649.00, 1 x ZTE Tab valued at \$199.00, 1 x Inkk Jazz Dual Handset valued at \$79.00, 1 x Getek GT-98 Touch Handset valued at \$229.00 and Cash \$156.00 all to the total value of \$7,139.00 the property of Tappoo City Bookmark [Vodafone].

#### **THIRD COUNT**

##### **Statement of Offence**

**DAMAGING PROPERTY:** *Contrary to section 369 (1) of the Crimes Decree No. 44 of 2009.*

#### **Particulars of Offence**

**MARTIN REGINALD SEBASTIAN SINGH**, on the 7 day of March, 2013 at Suva in the Central Division, wilfully and unlawfully damaged the cash register of Bollywood Café valued at \$139.00.

#### **FOURTH COUNT**

##### **Statement of Offence**

**THEFT:** *Contrary to section 291 (1) of the Crimes Decree No. 44 of 2009.*

#### **Particulars of Offence**

**MARTIN REGINALD SEBASTIAN SINGH**, on the 7 day of March, 2013 at Suva in the Central Division, dishonestly appropriated [stole] \$310.15 cash, the property of Bollywood Café.

#### **FIFTH COUNT**

##### **Statement of Offence**

**DAMAGING PROPERTY:** *Contrary to section 369 (1) of the Crimes Decree No. 44 of 2009.*

#### **Particulars of Offence**

**MARTIN REGINALD SEBASTIAN SINGH**, on the 7 day of March, 2013 at Suva in the Central Division, wilfully and unlawfully damaged the Cash Register of Submarine Café valued at \$139.00.

#### **SIXTH COUNT**

##### **Statement of Offence**

**THEFT**: Contrary to section 291 (1) of the Crimes Decree No. 44 of 2009.

##### **Particulars of Offence**

**MARTIN REGINALD SEBASTIAN SINGH**, on the 7 day of March, 2013, at Suva in the Central Division, dishonestly appropriated [stole] \$200.00 cash, the property of Submarine Café.

#### **SEVENTH COUNT**

##### **Statement of Offence**

**DAMAGING PROPERTY**: Contrary to section 369 (1) of the Crimes Decree No. 44 of 2009.

##### **Particulars of Offence**

**MARTIN REGINALD SEBASTIAN SINGH**, on the 7 day of March, 2013 at Suva in the Central Division, wilfully and unlawfully damaged the Cash Register of LA Burgers valued at \$139.00.

#### **EIGHTH COUNT**

##### **Statement of Offence**

**THEFT**: Contrary to section 291 (1) of the Crimes Decree No. 44 of 2009.

##### **Particulars of Offence**

**MARTIN REGINALD SEBASTIAN SINGH**, on the 7 day of March, 2013 at Suva in the Central Division, dishonestly appropriated [stole] \$234.50 cash, the property of LA Burgers.

#### **NINTH COUNT**

##### **Statement of Offence**

**DAMAGING PROPERTY**: Contrary to section 369 (1) of the Crimes Decree No. 44 of 2009.

##### **Particulars of Offence**

**MARTIN REGINALD SEBASTIAN SINGH**, on the 7 day of March, 2013 at Suva in the Central Division, wilfully and unlawfully damaged the Cash Register of Mexican Café valued at \$139.00.

#### **TENTH COUNT**

##### **Statement of Offence**

**THEFT**: Contrary to section 291 (1) of the Crimes Decree No. 44 of 2009.

##### **Particulars of Offence**

**MARTIN REGINALD SEBASTIAN SINGH**, on the 7 day of March, 2013 at Suva in the Central Division, dishonestly appropriated [stole] \$200.00 Cash, the property of Mexican Café.

#### **ELEVENTH COUNT**

##### **Statement of Offence**

**DAMAGING PROPERTY**: Contrary to section 369 (1) of the Crimes Decree No. 44 of 2009.

##### **Particulars of Offence**

**MARTIN REGINALD SEBASTIAN SINGH**, on the 7 day of March, 2013 at Suva in the Central Division, wilfully and unlawfully damaged the Cash Register of Papa Joe's Restaurant valued at \$139.00.

#### **TWELFTH COUNT**

##### **Statement of Offence**

**THEFT**: Contrary to section 291 (1) of the Crimes Decree No. 44 of 2009.

##### **Particulars of Offence**

**MARTIN REGINALD SEBASTIAN SINGH**, on the 7 day of March, 2013 at Suva in the Central Division, dishonestly appropriated [stole] \$249.80 cash the property of Papa Joe's Restaurant.

#### **THIRTEENTH COUNT**

##### **Statement of Offence**

**DAMAGING PROPERTY**: Contrary to section 369 (1) of the Crimes Decree No. 44 of 2009.

##### **Particulars of Offence**

**MARTIN REGINALD SEBASTIAN SINGH**, on the 7 day of March, 2013 at Suva in the Central Division, wilfully and unlawfully damaged the Cash Register of Madras Masala valued at \$139.00.

#### **FOURTEENTH COUNT**

##### **Statement of Offence**

**THEFT**: Contrary to section 291 (1) of the Crimes Decree No. 44 of 2009.

##### **Particulars of Offence**

**MARTIN REGINALD SEBASTIAN SINGH**, on the 7 day of March, 2013 at Suva in the Central Division, dishonestly appropriated [stole] \$245.95 cash the property of Madras Masala.

#### **FIFTEENTH COUNT**

##### **Statement of Offence**

**BURGLARY**: Contrary to section 312 (1) of the Crimes Decree No. 44 of 2009.

##### **Particulars of Offence**

**MARTIN REGINALD SEBASTIAN SINGH**, on 7 day of March, 2013 at Suva in the Central Division, broke and entered into **Cozmo Lounge** as a trespasser with intent to steal from therein.

#### **SIXTEENTH COUNT**

##### **Statement of Offence**

**THEFT**: Contrary to section 291 (1) of the Crimes Decree No. 44 of 2009.

##### **Particulars of Offence**

**MARTIN REGINALD SEBASTIAN SINGH**, on 7 day of March, 2013 at Suva in the Central Division, dishonestly appropriated [stole] \$1,713.90 cash, 1 x Jim Beam White Label 30 ml valued at \$251.60, 1 x Glenfiddich Ancients Reserve 30ml valued at \$303.60 and 1 x Johnny Walker Red 30ml valued at \$231.00 all to the total value of \$2,500.00 the property of Cozmo Lounge.

#### **SEVENTEENTH COUNT**

##### **Statement of Offence**

**DAMAGING PROPERTY**: Contrary to section 369 (1) of the Crimes Decree No. 44 of 2009.

##### **Particulars of Offence**

**MARTIN REGINALD SEBASTIAN SINGH**, on 7 day of March, 2013 at Suva in the Central Division, wilfully and unlawfully Fire Escape Door, Level 4 Tappoo City valued at \$220.00.

## **EIGHTEENTH COUNT**

### **Statement of Offence**

**DAMAGING PROPERTY:** Contrary to section 369 (1) of the Crimes Decree No. 44 of 2009.

### **Particulars of Offence**

**MARTIN REGINALD SEBASTIAN SINGH**, on the 7 day of March, 2013 at Suva in the Central Division, wilfully and unlawfully damaged the Fire Escape Door, Ground Level, Tappoo City, valued at \$220.00

2. The summary of facts were read in court by the prosecutor. Briefly, they were as follows. The appellant went to Tappoo City building on 7 March 2013 at about 8.30 pm. When Tappoo City closed for the night, the appellant never came out. He came out the building the next day, that is, the 8 March 2013 at 8 am. While inside Tappoo City during the night, and early morning on 8 March 2013, the appellant broke into complainant's no. 1 shop, with intent to steal (count no. 1). Then he stole the complainant's properties mentioned in count no. 2. Then he proceeded to break 6 complainants' cash registers, valued at a total of \$834, and stole a total of \$1,260.40 cash therefrom (counts nos. 2 to 14). He then broke into complainant no. 8's lounge (count no. 15) and stole \$1,713.90 cash and \$786.10 worth of liquor therefrom (count no.16). He later damaged 2 fire escape doors, valued at \$220 each.
3. The appellant, with his counsel present, agreed with the above summary of facts. The court found him guilty as charged on all counts, and convicted him accordingly. The appellant, through his counsel, filed his written plea in mitigation, and sentence submission.
4. The court delivered a written sentence on 22 May 2013. The sentence includes 9 pages. The appellant was given a concurrent total sentence of 33 months imprisonment (2 years 9 months), with a non-parole period of 30 months (2 years 6 months).
5. The appellant was not happy with the sentence. He appealed on the following grounds:

- “...a. *That the learned Magistrate erred in law and in fact by not taking into account all the mitigating factors raised, and not providing the appropriate deductions towards each offence convicted of;*
- b. *That the learned Magistrate erred in law and in fact in adopting the higher end of the tariff for the offence of Burglary as her starting point;*
- c. *That the learned Magistrate erred in law and in fact in adopting the high end of the tariff for the offence of Theft as her starting point;*
- d. *That the learned Magistrate erred in law and in fact in adopting the starting point of 9 months for the offence of Damaging Property;*
- e. *That the learned Magistrate erred in law and in fact in holding that the acts were committed for the Petitioners own purpose and without considering the violation of multiple complainants rights and freedoms as aggravating factors as these are a common aspect to almost all crimes committed. Aggravating factors are the relevant factors that make the offending worse thus justifying the need for the harshest penalty;*
- f. *That the learned Magistrate erred in law and in fact in considering the prevalence of these types of offences without referring to results or any data to support this position...”*
6. On 19 August 2013, I heard the parties on the appeal proper. Before that, the appellant was given the standard warning that his sentence may go up or down, if the appeal is heard. He preferred the appeal to continue. I have carefully heard them. I have read the court record and the parties’ written submissions, including the authorities submitted.

**Ground (a) of Appeal**

7. In paragraph 14 of her sentencing remarks, the learned Magistrate identified the mitigating factors. In paragraph 15 of her sentencing remarks, she gave 15 months reduction for the mitigating factors. That is a big reduction. She had included all the mitigating factors submitted by the appellant in his plea in mitigation and sentence submission. In my view, this complaint was unfounded, and I therefore dismiss it.

### **Ground (b) and (c) of Appeal**

8. These grounds could be considered together. Both the appellant and the State agreed that the learned Magistrate had identified the right tariff for “burglary” and “Theft”. However, the appellant said the learned Magistrate was wrong to start at the higher end of the tariff. The State agreed with the appellant. I have carefully considered both parties submissions. In my view, the learned Magistrate was correct in using the high end of the tariff, given the circumstances of this case. This was not a single act of burglary or theft. The appellant committed two burglaries and eight thefts in the course of one transaction. It showed a person who could not care less for the hard working people who ran those businesses. The appellant was deceptive by hiding in Tappoo City, waiting to attack the complainants’ shops and properties, when they least expected it. In my view, there was nothing legally wrong by the learned Magistrate adopting the higher end of the tariff, as her starting point. These grounds are misconceived, and I dismiss them.

### **Ground (d) of Appeal**

9. Both parties agree that the learned Magistrate identified the correct tariff for “Damaging Property”, that is, a sentence between 6 to 18 months. On the relevant counts, she stayed within the applicable tariff, when she determined her starting point. In my view, she has not erred. This ground of appeal is dismissed.

### **Ground (e) of Appeal**

10. Obviously, the learned Magistrate was referring to the fact that “greed” was a motivating factor for the appellant when committing the offences, and in doing so, he had no regard whatsoever to the ten complainants’ property rights. In my view, this complaint was misconceived, and I dismiss it accordingly.

### **Ground (f) of Appeal**

11. The learned Magistrate sits in her court 5 days a week and 4 weeks per month listening to all these types of offences coming before the courts. The “data” unfolds before her court daily. In my view, the learned Magistrate had every right to make those comments in her sentencing remarks. I therefore dismiss this ground of appeal.



12. Given the above, the appellant's appeals against sentence are dismissed. No good grounds are shown to tamper with the learned Magistrate's decision. Appeal against sentence is disallowed.

**Salesi Temo**  
**JUDGE**

**Solicitor for Appellant** : **Siwatibau & Sloan, Barristers & Solicitors, Suva.**  
**Solicitor for Respondent** : **Office of the Director of Public Prosecution, Suva.**