

IN THE HIGH COURT OF FIJI

AT SUVA

CRIMINAL JURISDICTION

CRIMINAL CASE NO. HAC 281 OF 2013S

STATE

vs

JOHNNY MAFUTUNA

Counselors : Mr. T. Qalinauci for State
Mr. I. Romanu for Accused

Hearing : 5 November, 2013

Sentence : 15 October, 2015

SENTENCE

1. On 5 November 2013, in the presence of your counsel, you pleaded guilty and were convicted on the following information:

FIRST COUNT

Statement of Offence

AGGRAVATED BURGLARY: Contrary to Section 313 (1)(a) of the Crimes Decree No. 44 of 2009.

Particulars of Offence

PAULA VURA, VERETI ISIMELI VANANALAGI, JOHNNY MAFUTUNA and ENERIKO SERU, on the 19th day of July 2013, at Namadi Heights in the Central Division, broke into and entered the dwelling house of SOPHIA JI and WEN YI as trespassers, with intent to commit theft therein.

SECOND COUNT

Statement of Offence

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

Particulars of Offence

PAULA VURA, VERETI ISIMELI VANANALAGI, JOHNNY MAFUTUNA and ENERIKO SERU, on the 19th day of July 2013, at Namadi Heights in the Central Division, dishonestly appropriated 1 Anna Klein brand wrist watch valued at \$1000.00; a CK brand wrist watch valued at \$150.00; 1 men's wrist watch valued at \$1000.00; 1 laptop notebook and 1 Dell brand laptop together valued at \$4000.00; 1 A45 mobile phone valued at \$2000.00; 1 Nokia mobile phone valued at \$70.00; 1 Nokia battery and charger valued at \$35.00; 1 belt buckle valued at \$25.00; 1 Adidas bag valued at \$80.00; cash in the sum of FJD \$3000.00; assorted clothes valued at \$300.00; and 1 carton of Shuangxi cigarettes valued at \$3325.00; all to the total value of **\$14985**, the property of **SOPHIA JI** and others.

2. The prosecution read the summary of facts in court. Briefly they were as follows. At the material time, you and others broke into the complainant's dwelling house, as trespassers with intent to steal. After entering the complainants' house as trespassers, you and the others ransacked the house, and stole the items mentioned in count no. 2 of the information.
3. The court checked with you and your counsel to see that you are admitting to all the elements of "aggravated burglary" (count no. 1) and "theft" (count no. 2) in the information. Through your counsel, you admitted the prosecution's summary of facts. You admitted, through your counsel that, at the material time, you entered the complainants' dwelling house with others as trespassers with intent to steal, and stole the items mentioned in count no. 2. As a result of the above, the court found you guilty as charged, and convicted you on those counts.
4. In **State v Josevata Lesumailodoni**, Criminal Case No. HAC 094 of 2013S, I said the following, "...As I have said in **State v Josese Caginaliwalala & Others**, Criminal Case No. HAC 293 of 2011S, High Court, Suva and **State v Peni Vulisoko & Another**, Criminal Case No. HAC 118 of 2013S, High Court, Suva:

"...Aggravated burglary" carried a maximum sentence of 17 years imprisonment (section 313 (1) of the Crimes Decree 2009). In the repealed Penal Code, Chapter 17, "burglary" carried a maximum sentence of life imprisonment (section 299 of Penal

Code). In Viliame Gukisuva v The State, Criminal Appeal No. HAA 117 of 2007, High Court, Suva, Her Ladyship Madam Justice N. Shameem, held that the tariff for burglary was a sentence between 2 to 3 years imprisonment.

"Theft" carried a maximum sentence of 10 years imprisonment [section 291 (1) of Crimes Decree 2009]. In the repealed Penal Code, Chapter 17, "simple theft" carried a maximum penalty of 5 years imprisonment; however, if the person had been previously convicted of a felony, the maximum penalty was 10 years imprisonment (section 259 (1) and 262 of the Penal Code). In Navitalai Seru vs The State, Criminal Appeal No. HAA 84 and 85 of 2002S, Her Ladyship Madam Justice Shameem said as follows:

"...the maximum sentence for simple larceny is (on a second conviction) 10 years imprisonment. The tariff, on a first conviction under section 259 and 262 of the Penal Code, is two months to nine months imprisonment (Paula Bale vs The State, Criminal Appeal No. 27 of 1998, Pauliasi Nadali vs The State, Criminal Appeal No. 29 of 1998, Iowane Wainiqolo vs The State, Criminal Appeal No. 44, 45 of 1998, Ronald Vikash Singh Criminal Appeal No. HAA 035 of 2002). It is logical, that on a second conviction the tariff is doubled to four months to 18 months imprisonment, because the statutory maximum increases from five to ten years. I accept this as a tariff in cases of second convictions for larceny..."

In State vs Jona Saukilagi, Criminal Case No. HAC 21 of 2004S, Her Ladyship further said as follows:

"...Stealing from the bank is a serious matter. The tariff for simple larceny on first conviction is 2 – 9 months (Ronald Vikash vs State, HAA 035 of 2002) and on second conviction a sentence in excess of 9 months. In cases of the larceny of large amounts of money sentences of 1 ½ years imprisonment (Isoa Codrokadroka vs State Criminal Appeal No. 67 of 2002) and 3 years imprisonment have been upheld by the High Court (Sevanaia Via Koroi vs The State, Criminal Appeal No. HAA 031 of 2001S). Much depends on the value of the money stolen, and the nature of the relationship between victim and defendant. The method of stealing is also relevant..."

One could see from the above authorities that the accepted tariff for "theft" is a sentence between 2 months to 3 years, depending on the circumstances and facts of the case. However, the actual sentence in the case will depend on the aggravating and mitigating factors..."

5. The aggravating factors were as follows:

- (i) Your offending was well planned and executed. You deliberately joined a group who had targeted the complainant's dwelling house. You and your friends went to the complainant's house. You waited outside for them to sleep. When they slept, you and your friends broke into the house, ransacked the same and stole the properties mentioned in count no. 2. You will have to lose your liberty to pay for your crime.
- (ii) By offending against the complainant, you had shown no regard whatsoever to their property rights, to their right to privacy and their right as human beings.
6. The mitigating factors were as follows:
- (i) Although you pleaded guilty to the offence three months after first call in the High Court, you nevertheless saved the court's time;
- (ii) You have been remanded in custody since 23 July 2013, that is, approximately 2 years 3 months ago.
7. Taking into account the aggravating and mitigating factors in this case, the accused had already served the equivalent of 3 years 3 months imprisonment from 23 July 2013. As a matter of formality, he is sentenced to 3 years 3 months each on count no. 1 and 2, both to be concurrent to each other, a total sentence of 3 years 3 months. Given his good behaviour since pleading guilty on 5 November 2013, he is entitled to a one third discount on the 3 years 3 months total sentence of imprisonment. He had already served 2 years 3 months while remanded in custody. He had served his time. He is released forthwith and is free to go home. I order so accordingly.



Salesi Temo
JUDGE

Solicitor for the State
Solicitor for Accused

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Office of the Director of Public Prosecution, Suva.
I. Romanu, Barrister & Solicitor, Suva.