

**IN THE HIGH COURT OF FIJI**  
**AT LAUTOKA**  
**[APPELLATE JURISDICTION]**

**CRIMINAL APPEAL NO. HAA 24 OF 2018**  
**(Magistrates Court Case No. 52 of 2018)**

**BETWEEN** : **PENI NAKARAWA**  
**APPELLANT**

**AND** : **STATE**  
**RESPONDENT**

**Counsel** : **Ms V Narara for the Appellant**  
**Ms R Uce for the Respondent**

**Date of Hearing** : **27 June 2018**

**Date of Judgment** : **27 June 2018**

**JUDGMENT**

[1] This is a timely appeal against sentence only.

[2] On 16 April 2018, the appellant was sentenced to 14 months imprisonment for burglary and 10 months imprisonment for theft, to be served concurrently in the Magistrates' Court at Lautoka. Since the appellant had been in custody on remand, the total term was further reduced by 3 months. The total term to serve was 11 months imprisonment. When the warrant of commitment was drawn, the total term of 11 months imprisonment was made consecutive to the appellant's pre-existing sentence of 7 months imprisonment for escaping from lawful custody and resisting arrest imposed on 13 February 2018.

- [3] The grounds of appeal in summary are:
- (1) The starting point was excessive.
  - (2) The sentence should have been made concurrent with the pre-existing sentence.
  - (3) The sentence offends the totality principle.
- [4] The victim was a 65 year old male. On 13 January 2018, the appellant broke into the victim's home when he was away in the evening attending a family function. When the victim returned home, he found his home was ransacked and his properties missing. The appellant was caught on the same evening with the stolen properties. The total value of the stolen items was \$3989.00.
- [5] The appellant was produced in the Magistrates' Court on 16 January 2018. He waived his right to counsel and elected to be tried in the Magistrates' Court. On 20 March 2018, the appellant was arraigned on the charges. He pleaded guilty to both charges.
- [6] The maximum penalty prescribed for burglary is 13 years imprisonment, while for theft it is 10 years imprisonment. The learned Magistrate used a starting point of 24 months for burglary and 18 months for theft. He gave 3 months discount for mitigating factors, 1/3 discount for the early guilty plea and 3 months discount for the remand period. The sentence was not enhanced to reflect any aggravating factors.
- [7] The use of a starting point in sentencing is a guide to arrive at a just and appropriate sentence that reflects the criminality involved. There is no hard and fast rule regarding the choice of a starting point, but in practice, it is desirable to use the lower or middle term of the tariff without reference to mitigating and aggravating factors. There is no error in the use of a starting point of 24 months imprisonment for burglary and 18 months for theft.
- [8] The appellant had three previous convictions. One of his convictions is for robbery with violence. In 2014 he was sentenced to 2 years imprisonment for that offence. He was not entitled for any credit for previous good character.

[9] The appellant is very fortunate to receive a lenient sentence for the two offences he committed after serving his sentence for robbery with violence. The appellant broke into the home of an elderly victim and stole his personal belongings while he was not at home. He continued with his anti-social behaviour by escaping from lawful custody and resisting arrest. These are separate crimes justifying a consecutive sentence. The total sentence is just and appropriate and not manifestly excessive.

[10] The appeal is dismissed.



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**Hon. Mr. Justice Daniel Goundar**

**Solicitors:**

Legal Aid Commission for the Appellant

Office of the Director of Public Prosecutions for the Respondent