

IN THE HIGH COURT OF FIJI
AT SUVA
CRIMINAL JURISDICTION

CRIMINAL CASE NO.: HAC 24 OF 2019

STATE

-v-

MANASA ROKOTUIVEKAU

Counsel: Ms. J. Fatiaki for Prosecution
MS. T. Kean for Accused

Date of Sentence : 28 March 2019

SENTENCE

1. Manasa Rokotuivekau, you were charged with one count of Aggravated Burglary and one count of Theft. The information upon which you were charged is as follows:

COUNT 1

Statement of Offence

AGGRAVATED BURGLARY: Contrary to Section 313(1) (a) of the Crimes Act 2009.

MANASA ROKOTUIVEIKAU in the company of Others on the 4th day of January 2019, at 31 Tomanu Place, Nasinu in the Central Division, entered into the house of SANJAY PRASAD as trespassers, with intention to commit theft therein.

COUNT 2

Statement of Offence

THEFT: *Contrary to Section 291(1) of the Crimes Act 2009.*

Particulars of Offence

MANASA ROKOTUIVEIKAU in the company of Others on the 4th day of January 2019, at 31 Tomanu Place, Nasinu in the Central Division, dishonestly appropriated \$200.00 cash, Assorted tin food items and Assorted snacks, the property of SANJAY PRASAD with the intention of permanently depriving SANJAY PRASAD of his properties.

2. You have freely and voluntarily pleaded guilty to the charge. You are represented by a counsel. You understood the consequence of the guilty plea and the sentencing tariffs for offences you have committed. I am satisfied that your guilty plea is informed and unequivocal.
3. You agreed the following summary of facts when it was read to you in court. The facts agreed satisfy all the elements of each offence you are charged with. You are convicted as charged.
4. The facts you agreed are that:
 1. The complainant in the matter is Sanjay Prasad, 53 years old, self-employed businessman, resides at Lot 31, Tomanu Place, Nasinu.
 2. On 4 January 2019, at about 12 pm, the complainant having securely locked up his residence left his home to travel into Suva.

3. The complainant returned to his home at around 5 pm that same afternoon and having opened the front door, walked inside towards the washroom at the back of the house. It was then that he noticed that the roofing iron wall by the kitchen sink had been opened. He looked out towards the window and saw three boys running away from his home.
4. Out of the three boys, the complainant recognized one of them namely Samuel Memaofa, a juvenile - an accomplice of the accused who resided next door to the complainant.
5. Monika Walter, a resident of Tomanu Road on the same day between 3 and 4 pm was at her home when the juvenile Samuel and another boy by the name of Jolame had stopped by to see her. Not long after, the accused joined them. The three boys then left her home.
6. After a short time, the same three boys ran past her, and she noticed that Jolame was carrying a bag which appeared to be full of items.
7. Not long after the three boys had past her, she met the complainant who told her that the three boys that had run past her had just broken into his home.
8. The complainant having checked his home noted that \$200.00 cash, some assorted tin food items and some assorted snacks had been stolen.
9. The matter was subsequently reported to the Valelevu Police Station and investigations led to the accused being arrested.

10. On 15 January 2019, the accused was interviewed under caution by DC 5165 Koshal Dutt at the Valelevu Police Station where he voluntarily admitted to committing the offences of Aggravated Burglary and Theft.
 11. In the Record of Interview, the accused states that on 4 January 2019 he was in the company of another and had broken into the complainant's house through the kitchen by removing the roofing iron on the kitchen wall, and had taken various items.
 12. None of the complainant's items were recovered.
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5. The maximum punishment for Aggravated Burglary under Section 313 (1) (a) is an imprisonment term of 17 years and the maximum punishment for Theft is an imprisonment term of 10 years.
 6. The tariff for the offence of Aggravated Burglary is between 18 months to 3 years imprisonment. This tariff has been adopted in several decided cases: *State v. Mikaele Buliruarua*[2010] FJHC 384; HAC 157.2010 (6 September 2010); *State v. Nasara*[2011] FJHC 677; HAC 143.2010 (31 October 2011); *State v. Tavualevu*[2013] FJHC 246; HAC 43.2013 (16 May 2013); *State v. Seninawanawa*[2015] FJHC 261; HAC 138.2012 (22 April 2015); *State v. Seru*[2015] FJHC 528; HAC 426.2012 (6 July 2015); *State v. Drose*[2017] FJHC 205; HAC 325.2015 (28 February 2017); and *State v. Rasegadi & Another* [2018] FJHC 364; HAC 101.2018 (7 May 2018) and most recently in *State v Tukele -* [2018] FJHC 558; HAC179.2018 (28 June 2018).

7. For the offence of Theft, the tariff was discussed in *Waqa v State* [HAA 17 of 2015] where the tariff. The tariff for the offence of Theft should be 4 months to 3 years imprisonment.
8. In assessing the objective seriousness of your offending, I examined the degree of culpability in your offending and the loss or harm caused to the complainant. I also took into consideration the fact that this offence is one of the most prevalent offences in Fiji. Having considered all these factors, I pick a starting point of 18 months.
9. In mitigation, your counsel has informed the court that you have entered an early guilty and that you regret your action. You are a first and young offender. You were 18 years old at the time of the offence. You earn your living by washing cars. You are single and you live with your elderly mother. You pleaded guilty at the first available opportunity. I consider your early guilty as evidence of genuine remorse. You have also saved court time and resources by pleading guilty to the charge at a very early stage of the proceedings.
10. I would impose an aggregate sentence in terms of section 17 of the Sentencing and Penalties Act because you were convicted of more than one offence founded on the same facts.
11. You have been in remand since 18th January, 2019. The time spent in remand is approximately 3 months. I have also taken into account the remand period as a separate reduction.
12. For all these factors, I give you a reduction of one third in your sentence.

13. The courts have a duty to denounce and deter this kind of anti-social behaviour. However, you are a young and first offender. The primary purpose of the punishment is rehabilitation. I have taken into consideration your potential for rehabilitation in view of your youth and clean record.
14. I sentence you to 6 months' imprisonment.
15. Taking into consideration your early guilty plea, genuine remorse, youth and the clear record, I am inclined to suspend half of your sentence for a period of 2 years.
16. Manasa Rokotuivekau, you are sentenced to 6 months' imprisonment, 3 months of which is suspended for a period of 2 years. Accordingly you are to serve only three months in prison with immediate effect.




Aruna Aluthge
Judge

AT Suva
On 28th March, 2019

Counsel: Office of the Director of Public Prosecution for Prosecution
Office of the Legal Aid Commission for Accused