

IN THE HIGH COURT OF FIJI AT SUVA

CASE NO: HAC. 153 of 2019

[CRIMINAL JURISDICTION]

STATE

V

STEVEN BEVERLY

Counsel : Mr. R. Kumar for the State
Accused in person

Date of Sentence : 19th July 2019

SENTENCE

1. Steven Beverly, you pleaded guilty to the charges produced below when you were arraigned and were convicted as charged accordingly;

FIRST COUNT

Statement of Offence

AGGRAVATED BURGLARY: contrary to sections 313 (1) (a) of the Crimes Act 2009.

Particulars of Offence

STEVEN BEVERLY with another on 11 March 2019, at Nasinu in the Central Division, entered into the premises of ASKCOL VARIETY SHOP as trespassers with intent to commit theft therein.

SECOND COUNT

Statement of Offence

THEFT: contrary to section 291 (1) of the Crimes Act 2009.

Particulars of Offence

STEVEN BEVERLY with another on 11 March 2019, at Nasinu in the

Central Division, dishonestly appropriated (stole), cash amounting to FJ\$300, 12x King Sprays, 18x Men's Body Sprays, 12x Men's Extreme Bondage Body Sprays, 15x Men's Bondage Body Sprays, 18x Men's Spirit of Heaven Body Sprays, 24x Lyrou Body Sprays, 24x Dove Body Sprays and 18x large PK, all to the total value of FJ\$1346.37, the properties of **ASKCOL VARIETY SHOP**, with the intention of permanently depriving **ASKCOL VARIETY SHOP** of its said properties.

2. You have admitted the following summary of facts;

1. *The accused in this matter is Steven Beverly (DOB 25/11/94), a 24 year old labourer of Lot 39 Vatoa Road, Narere, Nasinu, Central Division.*
2. *The Victim in this matter is ASKCOL VARIETY SHOP (or "the shop"), is situated at Makoi, Nasinu, Central Division, owned by Anand Shannon Kumar.*

Count 1 (Aggravated Burglary, Section 313 (1) (a) Crimes Act 2009)

3. *At about 0300 hours on 11 March 2019 the accused, together with another unknown person, had broken and entered into the said ASKCOL Variety Shop as trespassers (or intruders) with intent to commit theft (or steal) from inside the said ASKCOL Variety Shop.*
4. *Shivneel Ram, a sales person of the said ASKCOL Variety Shop had opened the shop at about 0620 hours on 11 March 2019 and discovered that items inside the said ASKCOL Variety Shop were scattered on the floor and as such he knew that the shop had been broken into.*
5. *Emori Bulidromodromo, the caretaker of Rajesh Khan building where the said ASKCOL Variety Shop is located, had, after viewing closed circuit television (CCTV) footage of the said ASKCOL Variety Shop, relating to footage recorded for the period 11 March 2019, identified the accused and another coming out of the back gate of the said ASKCOL Variety Shop at about 0300 hours on 11 March 2019.*
6. *The accused was arrested on 06 April 2019 and interviewed under caution on 07 April 2019. The accused voluntarily admitted that on 11 March 2019 he had been at Makoi drinking liquor at 1.30am beside ASKCOL Variety Shop with his friends (Q&A 16-21). After drinking the accused was selling rolls and then he went to ASKCOL Variety Shop and pulled its wooden wall, which was rotten, and entered the shop (Q&A 24-26).*

Count 2 (Theft, Section 291 (1) Crimes Act 2009)

7. *The following items, belonging to ASKCOL Variety Shop, were noted by its sales person, the said Shivneel Ram, as having been stolen on 11 March 2019:*

- a. *Cash amounting to FJ\$300;*
- b. *12x King Sprays (at FJ\$9.995 each; FJ\$119.40);*
- c. *18x Men's Body Spray (at FJ\$7.99 each; FJ\$143.82);*
- d. *12x Men's Extreme Bondage Body Sprays (at FJ\$7.99 each; FJ\$95.88);*
- e. *15x Men's Bondage Body Sprays (at FJ\$7.99 each; FJ\$119.85);*
- f. *18x Men's Spirit of Heaven Body Sprays (at FJ\$7.99 each; FJ\$143.82);*
- g. *24x Lyrou Body Sprays (at FJ\$7.95 each; FJ\$190.80);*
- h. *24x Dove Body Sprays (at FJ\$8.95 each; FJ\$214.80); and*
- i. *18x large PK (at FJ\$1.00 each; FJ\$18.00).*

All to the total value of FJ\$1346.37.

8. *Under caution, the accused had voluntarily admitted that he stole money from the cash register of ASKCOL Variety Shop and stole men's sprays and PK from therein (Q&A 27). The accused admitted he pocketed the cash and put the body sprays in a bag and then went to Suva City's Sand Dunes Night Club where he bought alcohol using the cash he had stolen from ASKCOL Variety Shop (Q&A 28-32). The accused admitted he also used the stolen money to pay his bus fare, buy barbeque and pay his taxi fare home. (Q&A 33). The accused admitted that on 12/03/19 he went to Suva City and sold the men's body sprays to members of the public near the bus stand for FJ\$10.00 a packet where he received FJ\$150.00 from the sales (Q&A 34-36). The accused admitted that he used these monies for his launch, buying cigarettes and to pay his fare back home where he used up all the sales monies (Q&A 37-38). The accused was shown the said CCTV footage from ASKCOL Variety Shop and he confirmed the footage showed him stealing from inside the shop and the accused also took part in scene reconstruction (Q&A 39-41) (attached: Record of Interview of Steven Beverly conducted on 07 April 2019 by D/Cpl Jitendra Chand, witnessed by DC 2790 Rakesh).*

9. *The accused was charged with aggravated burglary and theft and he has nil previous convictions.*

3. The tariff for the offence of aggravated burglary which carries a maximum penalty of 17 years imprisonment should be an imprisonment term within the range of 6 years to 14 years. [See *State v Prasad* [2017] FJHC 761; HAC254.2016 (12 October 2017) and *State v Naulu* [2018] FJHC 548 (25 June 2018)]
4. The offence of theft contrary to section 291 of the Crimes Act carries a maximum sentence of 10 years. In the case of *Waqa v State* [HAA 17 of 2015], this court held that the tariff for the offence of theft should be 4 months to 3 years imprisonment.
5. The offences you are convicted of are founded on the same facts. Therefore, in view of the provisions of section 17 of the Sentencing and Penalties Act, I consider it appropriate to impose an aggregate sentence of imprisonment against you for the two offences you have committed. Section 17 of the Sentencing and Penalties Act 2009 ("Sentencing and Penalties Act") reads thus;

"If an offender is convicted of more than one offence founded on the same facts, or which form a series of offences of the same or a similar character, the court may impose an aggregate sentence of imprisonment in respect of those offences that does not exceed the total effective period of imprisonment that could be imposed if the court had imposed a separate term of imprisonment for each of them."

6. The summary of facts does not reveal any aggravating factors.
7. In your mitigation, apart from the fact that you have entered an early guilty plea, it is submitted that;
 - a) You are a first offender; and
 - b) You have cooperated with the police.

8. You are 24 years old. It is submitted that you live with your mother. You said that your father had passed away and you are looking after your sickly mother. You promised that you will not reoffend.
9. The interests of justice demand a deterrent punishment to be given in this type of cases. Undue leniency when it comes to punishing offenders who commit burglary or aggravated burglary, in my view, tend to contribute for burglary to remain as the most prevalent offence in Fiji and would therefore lead to an erosion of the confidence reposed by the people in the rule of law.
10. I would select 06 years as the starting point of your aggregate sentence. I would deduct 02 years in view of the above mitigating factors. Now your sentence is an imprisonment term of 04 years.
11. In view of your early guilty plea, I would grant you a discount of one-third. Accordingly, the final sentence is an imprisonment term of 02 years and 08 months. I would fix your non-parole period at 18 months.
12. It is submitted that you have been arrested in view of this matter on 06/04/19. Accordingly, you have spent 03 months and 13 days in custody in view of this matter. The time you have spent in custody shall be regarded as a period of imprisonment already served by you in terms of section 24 of the Sentencing and Penalties Act.
13. I have considered whether I should suspend your sentence. You have burgled a shop which provides a service to the general public. The total value of the stolen items is FJD1346.37 and none of the items were recovered. You have sold some of the items that were stolen and received \$150. You have used the proceeds of crime to buy alcohol and cigarettes. You refused to seek free legal assistance provided by the Legal Aid Commission and opted to appear in person. By this conduct you have indicated to me that you are unable to take proper decisions on your behalf and that you need guidance. Given the facts and circumstances before me, your

age and your background, I consider it imperative to have you serve the aforementioned sentence so that you will have the opportunity to benefit from the rehabilitation programs conducted by the Corrections Services. This sentence will also serve as a deterrent to you and others out there with similar impulses.


14. In the result you are sentenced to an imprisonment term of 02 years and 08 months with a non-parole period of 18 months.
15. Given the time spent in custody, the time remaining to be served is;

Head Sentence - 02 years; 04 months; and 17 days

Non-parole Period - 14 months and 17 days

16. Thirty (30) days to appeal to the Court of Appeal.




Vincent S. Perera
JUDGE

Solicitors:

Office of the Director of Public Prosecutions for the State
The accused in person