

**IN THE HIGH COURT OF FIJI AT SUVA**

**CASE NO: HAC. 177 of 2019**

**[CRIMINAL JURISDICTION]**

**STATE**

**V**

**TEVITA LOWE**

**Counsel** : Mr. Z. Zunaid for State  
Ms. S. Davnevesi for Accused

**Date of Sentence** : 19<sup>th</sup> July 2019

**SENTENCE**

1. Tevita Lowe, you pleaded guilty to the charges produced below and were convicted as charged accordingly;

**FIRST COUNT**

*Statement of Offence*

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

*Particulars of Offence*

**TEVITA LOWE** with others, on the 4<sup>th</sup> day of May 2019, at Suva in the Central Division, in the company of each other, entered into the property of **SEFOROSA LOLOHEA**, as trespassers with intent to commit theft.

**SECOND COUNT**

*Statement of Offence*

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

*Particulars of Offence*

**TEVITA LOWE** with others, on the 4<sup>th</sup> day of May 2019, at Suva in the Central Division, in the company of each other, dishonestly

appropriated 1x pair of Puma canvas, 1x pair of Desert boots, 1x Nike navy blue knapsack bag, 1x Fila navy blue training jacket, 1x ladies sling bag, 1x pair of black Rip Curl flip-flops, 1x pink pair of scrub uniform, 1x health card, 1x Rip Curl school bag, 1x black Acer laptop with bag and assorted food items, the properties of SEFOROSA LOLOHEA with the intention of permanently depriving SEFOROSA LOLOHEA of the said properties.

2. You have admitted the following summary of facts;

Accused (A1)

A1 in this matter is one Tevita Lowe, 18 years 2 months old, student at FNU, of Cunningham Stage 1, Nabuni Settlement.

Complainant [PW1]

The complainant in this matter is one, Seforosa Lolohea, 39 years old, Nurse, of Lot 70 Waimate, Cunningham stage 2.

Prosecution Witness 2 [PW2]

PW2 in this matter is one, Timoci Wilson, 16 years old, Student at Nabua Technical College, in Nabuni settlement, Cunningham.

- 1) The accused is charged and has voluntarily pleaded guilty to 1 count of aggravated burglary and theft contrary to section 313(1)(a) and 291(1) of the Crimes Act 2009.
- 2) On 4 May, 2019 around 2.30pm, the accused and three of his accomplices planned and broke into complainant's house along Wainimate Place in Cunningham, thereafter stealing various items. During the time of the offence, the complainant and her family were not at home.
- 3) The accused has made full admissions in his record of interview. The accused admitted that he removed the louver blades from the complainant's house window and then entered into the house. The accused and his accomplices then searched the house and stole the following items:
- 4) 1x pair of Puma canvas, 1x pair of Desert boots, 1x Nike navy blue knapsack bag, 1x Fila navy blue training jacket, 1x ladies sling bag, 1x pair of black Rip Curl flip-flops, 1x pink pair of scrub uniform, 1x health card, 1x Rip Curl school bag, 1x black Acer laptop with bag and assorted food items.
- 5) Police officers also recovered a blue coloured Nike bag from the accused person's house the very next day (05 May 2019). On 06 May 2019, the complainant identified the bag as her property which was stolen.
- 6) PW2 mentions in his police statement that on the night of the incident at around 2.30am, he was woken up by the accused and his three accomplices who had brought home some food. PW2 stated that the accused and his accomplices told him that they had broken into a house and stolen the food items from there. PW2, the accused and his accomplices then all ate the stolen food items, namely biscuits, milk, peanut-butter and cheese. The accused and his accomplices then left PW2's house thereafter.

7) Annexed hereto is the Record of Interview for the accused marked as "Annexure A".

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.
6. You are 18 years old. It is submitted that you live with your family. It is submitted that you were a student at the Fiji National University when you were arrested for this matter.
7. According to the summary of facts, you have committed the offences with three others. The offence of aggravated burglary is formed if the offence of burglary is committed by more than one person. In my view, the fact that the offence in this case was committed by 04 offenders should be considered as an aggravating factor. The seriousness of the offence of burglary increases with the number of offenders involved. It is also admitted that there was preplanning. I would consider these as aggravating factors.



8. In your mitigation, apart from the fact that you have entered an early guilty plea, it is submitted that;
  - a) You are a young first offender;
  - b) You are remorseful; and
  - c) You have cooperated with the police.
9. I would select 06 years as the starting point of your aggregate sentence. I would add 02 years in view of the aforementioned aggravating factors and I would deduct 04 years in view of the above mitigating factors. Now your sentence is an imprisonment term of 04 years.
10. 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.
11. It is submitted that you have been arrested in view of this matter on 05/05/19. Accordingly, you have spent 02 months and 14 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.
12. Given that you were 18 years and 02 months old and that you were a student at the time you committed this offence, I consider it appropriate to suspend the remaining period of your sentence in terms of section 26 of the Sentencing and Penalties Act for a period of 03 years in order to promote rehabilitation.
13. However, I note that the total value of the items stolen according to your cautioned interview is FJD2640 and there were no substantial recovery. The Nike bag which was stolen was recovered from you. The offence was committed by four individuals. All of you had consumed the food items you stole. The most expensive item stolen was the laptop which is valued at FJD2000 and according to you this was taken by one of the offenders who is yet to be arrested. Given the

circumstances, I consider it appropriate to impose a fine of \$200 on you because you cannot be allowed to leave this court today with the impression that you can just walk out with a suspended sentence having participated in a burglary involving FJD2640 and after benefiting from that crime. This fine should be paid within three months from today. The failure to pay this fine by 21/10/19 would result in you having to serve a period of 20 days or 10 days for each penalty unit or part of a penalty unit then remaining unpaid in terms of section 37 of the Sentencing and Penalties Act 2009.

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. Given the time spent in custody, the time remaining to be served is 02 years, 05 months and 16 days. This remaining term is suspended for 03 years. You should pay a fine of \$200 at the High Court Criminal Registry on or before 21/10/19 and failure to pay that fine would result in you being imprisoned for a term in accordance with section 37 of the Sentencing and Penalties Act.
15. The court clerk will explain you the effects of a suspended sentence.
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  
Legal Aid Commission for the Accused