

IN THE HIGH COURT OF FIJI
AT LAUTOKA
[CRIMINAL JURISDICTION]

High Court Criminal Case No. HAC 11 of 2019

BETWEEN : THE STATE

AND : 1. ARIKELEO TOGA
2. SAKIUSA NAVAKADRETIA

Counsel : Ms Prenika Lata for the State
Ms Alanieta Bilivalu for the Accused 1 & 2

Date of plea : 26 April 2019

Date of Sentence : 16 July 2019

SENTENCE

1. Arikeleo Toga and Sakiusa Navakadretia, you are to be sentenced upon freely and voluntarily pleading guilty to one count of aggravated burglary contrary to section

313(1)(a) of the Crimes Act 2009 and another count of theft contrary to section 291(1) of the Crimes Act 2009.

2. The Court is satisfied that your pleas are unequivocal and upon your admission of summary of facts, each of you are now convicted for the first and the second counts, as per the Information.

3. Each one of you admitted the following summary of facts;

- Between 17 November 2018 and 20 November 2018 Fone X shop at Lovu Lautoka was broken into and 7 iPhones, 2 Apple iPads, 15 Samsung high hand phones, 1 electric chainsaw and 1 red multimeter were stolen.
- The value of the stolen items is approximately \$ 10980.
- The red multimeter was recovered from one Zahid Ali.
- Accused 1 came back of the building, climbed the fence, followed the stairs and climbed through the toilet windows. Having seen the Phone X shop door was open he entered and ransacked the shop. He took some Samsung mobile phones and also picked a chainsaw. Accused 1 has admitted the commission of the offences with Accused 2 and another in his caution interview. Stolen items were sold, and they used the money on drinks.
- Accused 2 broke into the Fone X shop with Accused 1 and another between 17 November 2018 and 20 November 2018. Later they shared the stolen items amongst themselves. Accused 2 has admitted the allegations under caution.

4. These offences are prevalent in the society. You have broken into a business establishment and caused damages to the property. The items stolen are of substantial value. I consider those as aggravating factors.

5. I have considered the mitigation submissions filed by the Legal Aid Counsel on behalf of each of you. You have fully cooperated with investigations by the Police. From 10 December 2018 both of you have been in remand custody.

6. You, Arikeleo Toga are 35 years and before you were remanded you had been engaged in farming.
7. You, Sakiusa Navakadretia are 24 years and you had been unemployed before you were remanded.
8. Both of you have pleaded guilty at the earliest opportunity. The weight that should be attached to an early plea was discussed as follows by Justice Goundar in Mataunitoga v The State [2015] FJCA 70; AAU125 of 2013 (28 May 2015);

“In considering the weight of a guilty plea, sentencing courts are encouraged to give a separate consideration and qualification to the guilty plea (as a matter of practice and not principle) and assess the effects of the plea on the accused by taking into account all the relevant matters such as remorse, witness vulnerability and utilitarian value. The timing of the plea, of course, will play an important role when making that assessment.”

9. In Aitcheson V The State [2018] FJSC 29;CAV0012.2018 (2 November 2018) it was observed that;

“The one third discount may apply in less serious cases. In cases of abhorrence, or of many aggravating factors the discount must reduce, and in the worst cases shorten considerably.”

10. The seriousness of the offence of burglary was emphasized in State v Takalaibau [2018]FJHC 505;HAC154.2018 (15 June 2018) as follows;

“The seriousness of the aggravated burglary and theft from a dwelling home must be now considered in light of the legislative changes made to these offences by the Crimes Act. Both burglary and theft are now defined broadly, incorporating dishonest appropriation of property from any building as a trespasser at any time of the day. There is no distinction made

based on whether the building is used for dwelling or business or whether the offence is committed during the day or night. Burglary is elevated to aggravated burglary if the offence is committed in the company of another or with an offensive weapon. Aggravated burglary is categorized as an indictable offence while theft is categorized as a summary offence.”

11. Therefore, it is very clear that aggravated burglary is a serious offence regardless of whether the building broken in to is used for dwelling or for business purposes. I am not inclined to give you one third discount for your early plea. However, I decide to give you a lesser discount for saving the time of the court and for the expression of remorse.
12. You, Arikeleo Togo have 5 active previous convictions. You, Sakiusa Navakadretia have no previous convictions.
13. The maximum punishment for aggravated burglary is 17 years imprisonment. The tariff of 18 months to 3 years set in Turuturuvesi v State [2002] FLR 521 (23 December 2002) has been the tariff adopted by the courts in a long line of cases even after the introduction of the Crimes Act: State v. Drose [2017] FJHC 205; HAC 325.2015 (28 February 2017); State v Tukele - [2018] FJHC 558; HAC179.2018 (28 June 2018); State v. Rasegadi & Another [2018] FJHC 364; HAC 101.2018 (7 May 2018); State v Ravunaceva - Sentence [2018] FJHC 1026; HAC152.2018 (25 October 2018).
14. In State v Naulu [2018] FJHC 548 (25 June 2018) Justice Perera has proposed a new tariff of 6 years to 14 years for aggravated burglary. However, 18 months to 3 years seems to be the preferred tariff predominantly adopted by the courts. In State v Ravunaceva [2018] FJHC 1026; HAC152.2018 (25 October 2018) Justice Aluthge, while referring to the tariff of 18 months to 3 years endorsed by the Court of Appeal in Legavuni v State [2016] FJCA 31 stated that;

“I believe that the tariff that existed before *Leqavuni v State* (supra) should be applied by lower courts until the Court of Appeal decides otherwise.”

15. The maximum punishment for theft is 10 years imprisonment and the tariff for theft is 2 months to 3 years subject to the nature of offending as per *Ratusili v State* [2012]FJHC 1249 HAA011.2012 (1 August 2012).
16. The offences in this case are originated from the same transaction. Section 17 of the Sentencing and Penalties Act provides that if the offences are founded on the same facts the court can impose an aggregate sentence. Therefore, I decide to impose an aggregate sentence in respect of the first and second counts.
17. Having taken into account all the factors discussed above I decide to impose an aggregate sentence of two years imprisonment on each of you.
18. You, Arikeleo Togo have 5 active previous convictions and it does not seem that you have attempted to reform yourself. You, Sakiusa Navakadretia is a first offender. Generally, courts would consider suspending sentences imposed on first offenders. However, I am of the view that the circumstances of this case do not warrant suspension of your sentences. Property offences such as burglary and theft seem to be on the rise again since recent times. Members of the public have to live in fear that their houses and properties will be invaded by unruly elements like you. The courts have a duty to impose appropriate sentences to deter and denounce offences which disturbs the lives of peaceful members of the society.
19. For those reasons I decide not to suspend the aggregate sentences imposed on each of you.
20. Both of you have been in remand custody since 10 December 2018 for about 7 months. The period you were in custody shall be regarded as period of imprisonment already served by you.

21. Once the sentences are adjusted with the time you were in remand custody each of you should serve an actual period of 17 months imprisonment. Further I fix a non-parole period of 11 months for each of you.

30 days to appeal to the Court of appeal.



A handwritten signature in blue ink, consisting of several overlapping loops and a long horizontal stroke.

Rangajeeva Wimalasena
Acting Judge

Solicitors

Solicitors for the State : Office of the Director of Public Prosecutions

Solicitors for the Accused: Office of the Legal Aid Commission