

IN THE HIGH COURT OF FIJI AT SUVA

[CRIMINAL JURISDICTION]

CASE NO: HAC. 072 of 2018

BETWEEN :

STATE

AND :

RICHARD ALLEN

Counsel :

Ms. Chowdhury M. for State

:

The accused Appears in Person

Hearing on :

08th July 2019- 09th July 2019

Summing up on :

10th July 2019

Judgment :

19th July 2019

Sentence :

09th August 2019

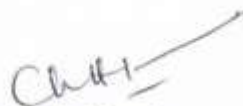
SENTENCE

1. Mr. Richard Allen, you stand convicted to the counts of Burglary and Theft after a full trial. At the conclusion of the evidence and after the directions given in the summing up, the assessors unanimously found you guilty to the counts of Aggravated Burglary and Theft. However, having reviewed the evidence, this court by its judgment dated 19th of July 2019, having basically concurred with the unanimous opinion of the assessors, convicted you to the Counts of Burglary and Theft.
2. Section 4 of the Sentencing and Penalties Act No. 42 of 2009 ("Sentencing and Penalties Act") stipulates the relevant factors that a Court should take into account during the sentencing process. I have duly considered these factors in determining the sentence to be imposed on you.

3. A person commits Burglary if he or she enters or remains in a building as a trespasser, with intent to commit theft of a particular item of property in the building, and is punishable with 13 years' imprisonment under section 312 of the Crimes Act. Theft is committed if a person dishonestly appropriates property belonging to another with the intention to permanently depriving him of the property. The maximum penalty for theft is 10 years imprisonment under section 291 of the Crimes Act.
4. The two offences you have committed are founded on the same facts. Therefore, according to section 17 of the Sentencing and Penalties Act, it would be appropriate to impose an aggregate sentence against you, for the two offences you have committed. Section 17 of the Sentencing and Penalties Act 2009 ("Sentencing and Penalties Act") states;

"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."
5. The State submits that the accepted tariff for Burglary is 18 months to 3 years of imprisonment. His Lordship Perera J. in **State v Naulu** - [2018] FJHC 548 (25 June 2018), reasons out the appropriate tariff should be from 18 months to 6 years. As for the offence of theft the accepted tariff would range from 2 months to 3 years (**Ratusili v State** [2012] FJHC 1249; HAA 011.2012).
6. The aggravating factors present in your case are that this was a pre-planned invasion. Further, these types of offences have increased due to the leniency they are dealt with and society now demands an unsympathetic and/or stern judicial approach on these types of offences in order to curtail them.
7. There aren't many mitigating factors other than that all the stolen articles were recovered. Though the accused is giving an undertaking to not to reoffend, he seems to have violated it many times before as he has 17 previous convictions.
8. Further I find that 11 out of your 17 previous convictions you have are for similar type of offences to the present offence. These type of offences fall into category (c) of Section 10 of the Sentencing and Penalties Act, 2009. Therefore, acting under the provisions of Section 11 of the Sentencing and Penalties Act, 2009, I declare the accused as a habitual offender.

9. I would select 4 years as the starting point of your aggregate sentence. I would enhance 3 years due to aggravating factors mentioned above. Now your sentence is an imprisonment term of 7 years.
10. I will deduct 6 months in consideration of your mitigatory factors. Now your final term would be 6 years and 6 months of imprisonment.
11. You have been in remand since 09th of February 2018. That is, 1 year and 6 months in remand. I deduct the said 18 months from your final sentence of which the remainder, you'd have to serve will be 05 years. Taking into account all the circumstances of this case, the non-parole period I would fix in view of the provisions of section 18 of the Sentencing and Penalties Act would be 4 years.
12. You have 30 days to appeal to the Court of Appeal if you so desire.


Chamath S. Morais
JUDGE



At Suva
09th of August 2019

***Solicitors for the State : Office of the Director of Public Prosecutions, Suva Solicitors for the
Accused : The Accused Appeared in Person.***