

IN THE HIGH COURT OF FIJI
AT SUVA
CRIMINAL JURISDICTION

CRIMINAL CASE NO.: HAC 168 OF 2019

STATE

-v-

1. SIMIONE WAQAICECE
2. RUPENI TOKABE

Counsel: Ms. U. Tamanikaiyaroi for Prosecution
Ms. T. Kean for Defence

Date of Sentence : 6 August 2019

SENTENCE

1. **Simione Waqaicece** and **Rupeni Tokabe**, you stand convicted of one count of Aggravated Burglary and one count of Theft on the following information:

COUNT 1

Statement of Offence

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

Particulars of Offence

SIMIONE WAQAICECE and **RUPENI TOKABE** between the 3rd day of May 2019 and the 4th day of May 2019 at Pacific Harbour in the Central Division, with each other entered into the dwelling house of **LORNA EDEN** as trespassers, with intent to commit theft.

COUNT 2

Statement of Offence

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

Particulars of Offence

SIMIONE WAQAICECE and **RUPENI TOKABE** between the 3rd day of May 2019 and the 4th day of May 2019 at Pacific Harbour in the Central Division, dishonestly appropriated 6x Fiji Gold stubby bottles, the property of **LORNA EDEN**.

2. Both of you pleaded guilty to each count on your own free will. You understood the consequence of the guilty plea and the sentencing tariffs for offences you have committed. I am satisfied that the guilty pleas are informed and unequivocal and entered freely and voluntarily.
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 found guilty and convicted on each count as charged.
4. The facts you agreed are that:

- I. Between the 3rd- 4th May of 2019, at Pacific Harbour at around 10pm the complainant locked all the doors and windows of her residence and went to sleep with her husband namely Tim Eden ("Tim").
- II. At around 2.35am, the complainant woke up and went to have a glass of water in the kitchen and upon returning to the bedroom saw that Tim was also awake. The complainant began watching movies when Tim heard the sound of beer bottles clanging together.
- III. The complainant told Tim to go and check in the kitchen when a few minutes later the complainant heard Tim shouting and yelling. The complainant quickly went to Tim and saw him running after someone.
- IV. As the complainant approached the kitchen she saw the first accused person walking out of their back sliding door and despite yelling out to him, the accused person walked out of their compound with a Fiji Good stubby bottle in his hand.
- V. Once Tim had returned to their residence he told the complainant that he saw the second accused whom he knew as their gardener inside their house before he ran away. After checking their home they noticed that 6 Fiji Gold stubby bottles had been stolen.
- VI. At around 5am, both the complainant and Tim were in their bedroom when they heard some movements outside their home. When Tim had gone to check he found the second accused and arrested him inside their compound and escorted him to the police station.
- VII. Both accused persons were arrested and interviewed under caution at Navua Police Station on 4th May 2019.

- VIII. The first accused was interviewed by DC 4230 Lasarusa Lala. Upon having the allegations put to him, he admitted to entering the complainant's home and picking 5 bottles of stubbies before leaving the house (Q&A 39), returning to the complainant's home to get a bottle of beer and upon doing so seeing the complainant talking to him (Q & A 42). [A copy of the record of interview of the second accused is attached].
5. The maximum punishment for Aggravated Burglary 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 recently in State v Tukele - [2018] FJHC 558; HAC179.2018 (28 June 2018).
 7. The tariff for Theft ranges from 4 months to 3 years imprisonment: Waga v State [HAA 17 of 2015].
 8. In terms of section 17 of the Sentencing and Penalties Act, I would impose an aggregate sentence for both counts in view that you were convicted based on the same facts.
 9. In assessing the objective seriousness of your offending, I took into consideration the degree of culpability in your offending and the loss or harm caused to the complainant. Having considered these factors, I would pick a starting point of 20 months.

10. The only aggravating factor in your offending is that you pre-planned these offences. I add 4 months for the aggravating feature to reach 24 months.
11. Now I proceed to consider the mitigating factors on individual basis.
12. **Simione Waqaicece** you are 28 years of age, a father of 2 year old daughter. You have sought forgiveness from the complainant and promised not to reoffend. You have cooperated with police. You seek mercy of this court. I deduct 6 months for above mentioned mitigating features to arrive at 18 months.
13. You pleaded guilty at the first available opportunity to both counts. I consider early guilty pleas as evidence of genuine remorse. You have saved court's time and resources by pleading guilty to the charges at a very early stage of the proceedings. I give a full third deduction to arrive at a sentence of 12 months imprisonment.
14. You have been in remand for approximately 3 months. Your remand period is separately deducted. Now your final aggregate sentence is 9 months imprisonment. You have five previous convictions of similar nature. You have committed these offences when two suspended sentences were still pending. You have failed to take the opportunity given by the courts on previous occasions to rehabilitate.
15. **Rupeni Tokabe**, you are 21 years of age and a security officer by profession. You are in a *de-facto* relationship and your partner is five months pregnant. You have cooperated with police. You seek mercy of this court. You have promised not to reoffend and you beg for one more chance to rehabilitate yourself. However, the Previous Conviction Report indicates that you have two previous convictions, one of which is of similar nature. You have committed this offence when a suspended sentence in a theft case was still pending. In view of the above, I am not convinced that you are serious in your claim for rehabilitation. I deduct 6 months for above mentioned mitigating features to arrive at a sentence of 18 months imprisonment.

16. You pleaded guilty at the first available opportunity to both counts. I consider your early guilty pleas as evidence of genuine remorse. You have saved court's time and resources by pleading guilty to the charges at a very early stage of the proceedings. I give a full third deduction to arrive at a sentence of 12 months imprisonment. You have been in remand for approximately 3 months. Your remand period is separately deducted. Now your final aggregate sentence is 9 months imprisonment.
17. The courts have a duty to denounce and deter this kind of anti-social behaviour. Both of you have not taken the opportunity given by the courts to rehabilitate yourselves on previous occasions. To deter you and others and also to protect the community, a custodial sentence is inevitable in this case.

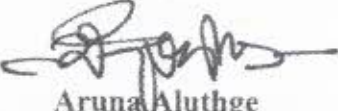
Summary

18. **Simione Waqacece**, you are sentenced to 9 months' imprisonment.
Rupeni Tokabe, you are sentenced to 9 months' imprisonment.
19. 30 days to appeal to the Court of Appeal.



AT Suva

On 6th August, 2019


Aruna Aluthge
Judge

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