

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

Criminal Case No.: HAC 62 of 2021

BETWEEN : STATE

AND : 1. ILIESA MASIWAWA
2. APENISA WAQA
3. LIVAI KAI

Counsel : Ms E. Thaggard for the State
Accused in Person

Dates of Hearing : 19 November 2021

Date of Sentence : 19 November 2021

SENTENCE

1. All three Accused have pleaded guilty to one count of burglary and one count of theft.
2. The facts are that in the month of August 2021, the victim left her home at Vunimoli to visit her estate in Udu with her family. She is an elderly female in her mid-seventies. When she returned home, she discovered her home had been broken into and items stolen. Entry was gained by removing the louver blades from the window. She claimed a range of items including liquor and jewellery were stolen.
3. On 17 September 2021, the three Accused were arrested. There have been partial recovery of the stolen property from them.

4. All three Accused have entered early guilty pleas and have saved the court's time and resources.
5. The first Accused is 20 years old and the second Accused is 26 years old and is married. Both have previous good character.
6. The third Accused is 40 years old. He has previous convictions. Currently he is serving a sentence of 4 months imprisonment for assault, which was imposed on 4 October 2021 by the Magistrates' Court.
7. The aggravating factors are that the victim was vulnerable, her home was burgled and the offence is prevalent in our community. The main purpose of sentence for burglary and theft is deterrence, both special and general.
8. Aggravated burglary is punishable by 17 years imprisonment. The statutory aggravation is that the burglary was committed in the company of another. The tariff range from 18 months to 3 years imprisonment. Theft is punishable by 10 years imprisonment.
9. I consider an aggregate sentence is appropriate. Both offences are part of one transaction. I make an adjustment of 2 months to reflect the remand period. An aggregate term of 18 months imprisonment is appropriate in all circumstances of the case.
10. The third Accused is not a first time offender. He has repeatedly showed disrespect to law and order. There is a need to protect the community from him. I have decided not to suspend his sentence despite his plea for clemency.
11. The first and the second Accused are first time offenders who have taken responsibility for their crime by pleading guilty early. Their remorse is genuine. They are likely to rehabilitate if given a chance. These are special circumstances to suspend their sentence.
12. The first and the second Accused are convicted and sentenced to an aggregate term of 18 months imprisonment suspended for 2 years.

13. The third Accused is convicted and sentenced to an aggregate term of 18 months imprisonment, to be served concurrently with his pre-existing sentence. I have decided not to fix a non-parole period.



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Hon. Mr Justice Daniel Goundar

Solicitors:

Office of the Director of the Public Prosecutions for the State
Accused in Person

