

IN THE HIGH COURT OF FIJI
AT LAUTOKA
CRIMINAL JURISDICTION

Criminal Case No.: HAC 40 of 2022

STATE

V

AUTIKO RATUMATUA

Counsel : Mr. J. Nasa for the State.
Ms. K. Vulimainadave for the Accused.

Date of Submissions: 17 October, 2022

Date of Sentence : 17 October, 2022

SENTENCE

1. The accused is charged by virtue of the following information filed by the Director of Public Prosecutions dated 21st April, 2022:

COUNT ONE

Statement of Offence

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

Particulars of Offence

AUTIKO RATUMATUA with another between the 11th day of February, 2022 and the 1st day of March, 2022, at Nadi in the Western Division, entered the property of NITESH PRASAD as trespassers, with the intention to commit theft.

COUNT TWO

Statement of Offence

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

Particulars of Offence

AUTIKO RATUMATUA with another between the 11th day of February, 2022 and the 1st day of March, 2022, at Nadi in the Western Division, dishonestly appropriated 1 x Bosch electrical tile cutter and 1 x red brush cutter belonging to NITESH PRASAD with intention of permanently depriving NITESH PRASAD of his property.

2. On 1st September, 2022 the accused in the presence of his counsel pleaded guilty to the above counts. Thereafter on 22nd September, 2022 the accused understood and admitted the summary of facts read by the state counsel as follows:

a) On the 11th day of February, 2022, at around 4pm, the complainant left his residential home for Labasa with his spouse. Prior to leaving

for Labasa, the complainant securely locked all the doors and windows to this home, including his bulk room, which was located adjacent to his home.

- b) On the 1st day of March 2022, whilst still in Labasa, the complainant received a phone call from his cousin and neighbour, Mr. Adarsh Nand (hereinafter referred to as PW 2). PW2 advised the complainant over the phone that someone was moving around the compound of his residential home.
- c) Thereafter, complainant requested PW2 to visit his residential home and inspect the premises. PW2 obliged to the complainant's request. After relevant checks were carried out, PW2 called the complainant again and informed him that the window screen to his bulk room was damaged and broken into.
- d) Complainant immediately reported the matter to police following receipt of this information from PW2. On the 2nd of March 2022, complainant returned from Labasa and upon checking his bulk room discovered the following items were missing:

<u>Items:</u>	<u>Value</u>
(a) 1 x bosch electrical tile cutter	\$350.00
(b) 1 x red brush cutter	\$200.00
<u>Total</u>	<u>\$550.00</u>

- e) Thereafter, the complainant checked his installed CCTV camera for footages of the break-in and found that the burglar with another, were captured on the footage. Following investigation of the matter, Ms.

Amele Maca (hereinafter referred to as "PW 3") who is the mother of the accused confirmed that the person seen on the CCTV footage moving around the complainant's residential compound and breaking in to the complainant's bulk room was her son, the accused.

f) Following this, the accused was apprehended by police and interviewed under caution on the 16th of March 2022 by DC Jolame Tuidroto and witnessed by D/Cpl. Watisoni at the Sabeto Police Station. Accused admitted at questions and answers 33, 34, 35, 36 and 37 that he and another had burgled into the complainant's property at Sabeto Central. Accused admitted that they went on foot and climbed over the fence of the complainant's residential home and walked towards the front area of the house.

g) Accused admits from question and answers 41 to 57 that he entered into the complainant's bulk room and stole items therein. The accused was taken for reconstruction and search of the missing items from the complainant's bulk room, however, none of the items stolen were recovered.

3. After considering the summary of facts read by the state counsel which was admitted by the accused and upon reading his caution interview, this court is satisfied that the accused has entered an unequivocal plea of guilty on his freewill.
4. This court is also satisfied that the accused has fully understood the nature of the charges and the consequences of pleading guilty. The summary of facts admitted satisfies all the elements of both the offences charged. The accused also admitted committing the offences in the company of another.

In view of the above, this court finds the accused guilty as charged and he is convicted accordingly.

AGGRAVATING FACTORS

5. The following aggravating factors are obvious:

a) Property Invasion

The accused did not have any regard for the property rights of the owner. The offences were committed at a time when no one was around. He was bold and undeterred in what he did in the company of another.

b) Prevalence of the offending

There has been an increase in such offending that people are reluctant to leave their homes unattended.

c) Planning

There is some degree of planning involved the accused knew the house was vacant so he broke into the bulk.

6. The learned counsel for the accused presented the following mitigation and personal details:

a) The accused is 20 years of age;

b) First offender;

c) Is a Farmer;

- d) Pleaded guilty at the earliest opportunity;
- e) Genuinely remorseful and apologies for his actions;
- f) Cooperated with police during investigations;
- g) Regrets what he has done;
- h) Seeks forgiveness from the court, the complainant and his family;
- i) Promises not to reoffend.

TARIFF

- 7. The maximum penalty of the offence of aggravated burglary is 17 years imprisonment.
- 8. The accepted tariff for this offence is a sentence between 18 months to 3 years imprisonment (*see Leqavuni v. State, Criminal Appeal No. AAU 106 of 2014 (26 February, 2016)*).
- 9. For the offence of theft the maximum penalty is 10 years imprisonment. The tariff for the offence of theft is settled. In *Mikaele Ratusili v. State, Criminal Appeal no. HAA 011 of 2012 (1 August, 2012)* Madigan J. set out the tariff for theft as follows:

“(i) For the first offence of simple theft the sentencing range should be between 2 and 9 months.

(ii) any subsequent offence should attract a penalty of at least 9 months.

(iii) Theft of large sums of money and thefts in breach of trust, whether first offence or not can attract sentences of up to three years.

(iv) regard should be had to the nature of the relationship between offender and victim.

(v) planned thefts will attract greater sentences than opportunistic thefts.”

DETERMINATION

10. Section 17 of the 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.”

11. Taking into account section 17 of the Sentencing and Penalties Act I prefer to impose an aggregate sentence for both the offences.

12. Considering the objective seriousness of the offences committed I select 18 months imprisonment (lower range of the tariff) as the aggregate sentence for both the offences. The sentence is increased for the aggravating factors and a reduction allowed for the early guilty plea, and mitigation. The accused has not been in remand he was granted bail on his first appearance by the Magistrate’s Court.

13. The final aggregate sentence for both the offences is 2 years imprisonment. This court is satisfied that the term of 2 years imprisonment 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 offence.

14. Under section 26 (2) (a) of the Sentencing and Penalties Act this court has a discretion to suspend the final sentence since it does not exceed 3 years imprisonment.
15. In *State vs. Alipate Sorovanalagi and others*, Revisional Case No. HAR 006 of 2012 (31 May 2012), Goundar J. reiterated the following guidelines in respect of suspension of a sentence at paragraph 23:

“[23] In DPP v Jolame Pita (1974) 20 FLR 5, Grant Actg. CJ (as he then was) held that in order to justify the imposition of a suspended sentence, there must be factors rendering immediate imprisonment inappropriate. In that case, Grant Actg. CJ was concerned about the number of instances where suspended sentences were imposed by the Magistrates' Court and those sentences could have been perceived by the public as 'having got away with it'. Because of those concerns, Grant Actg. CJ laid down guidelines for imposing suspended sentence at p.7:

"Once a court has reached the decision that a sentence of imprisonment is warranted there must be special circumstances to justify a suspension, such as an offender of comparatively good character who is not considered suitable for, or in need of probation, and who commits a relatively isolated offence of a moderately serious nature, but not involving violence. Or there may be other cogent reasons such as the extreme youth or age of the offender, or the circumstances of the offence as, for example, the misappropriation of a modest sum not involving a breach of trust, or the commission of

some other isolated offence of dishonesty particularly where the offender has not undergone a previous sentence of imprisonment in the relevant past. These examples are not to be taken as either inclusive or exclusive, as sentence depends in each case on the particular circumstances of the offence and the offender, but they are intended to illustrate that, to justify the suspension of a sentence of imprisonment, there must be factors rendering immediate imprisonment inappropriate."

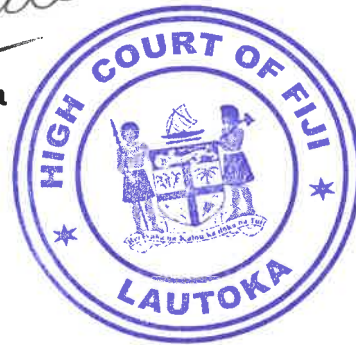
16. The following relevant special circumstances or special reasons for the suspension of the imprisonment term in my view needs to be weighed in choosing an immediate imprisonment term or a suspended sentence. The accused is a young offender (19 years at the time), he is of good character, isolated offences were committed by him, pleaded guilty at the earliest opportunity, is genuinely remorseful, cooperated with police and he takes full responsibility for his actions. These special reasons render immediate imprisonment term inappropriate.
17. Having considered section 4 (1) of the Sentencing and Penalties Act this court is of the view that this sentence is just in all the circumstances of the case.
18. A non-custodial sentence in this case will allow the accused to get his life in order. I have accepted that he is genuinely remorseful of what he has done. A non-custodial sentence will give the accused a chance to reform. The society does not condone such activities and this court also denounces such behaviour. However, this court has taken into account rehabilitation over and above deterrence.

ORDERS

- a) The accused is sentenced to 2 years imprisonment as an aggregate sentence for the two offences which is suspended for 3 years. The effect of suspended sentence is explained to the accused.
- b) 30 days to appeal to the Court of Appeal.



Sunil Sharma
Judge



At Lautoka

17 October, 2022

Solicitors

Office of the Director of Public Prosecutions for the State.

Office of the Legal Aid Commission for the Accused.