

IN THE HIGH COURT OF FIJI
AT SUVA
CRIMINAL JURISDICTION

Crim. Case No: HAC 64 of 2022

BETWEEN: **STATE**

PROSECUTION

A N D: **GEORGE NUKUNIMATASAWA WAISU**

ACCUSED PERSON

Counsel **:** Ms. P. Mishra for the State
 Mr. T. Varinava for Accused

Date of Sentence **:** 29th November 2022

SENTENCE

1. Mr. George Nukunimatasawa Waisu, you pleaded guilty to one count of Aggravated Burglary, contrary to Section 313 (1) (a) of the Crimes Act, which carries a maximum sentence of seventeen years imprisonment, one count of Theft, contrary to Section 291 (1) of the Crimes Act, which carries a maximum sentence of ten years imprisonment, and one count of Resisting Arrest, contrary to Section 277 (b) of the Crimes Act, which carries a maximum sentence of five years imprisonment. The particulars of offences are:

COUNT ONE

Statement of Offence

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

Particulars of Offence

GEORGE NUKUNIMATASAWA WAISU and another on the 12th day of February, 2022 at Valelevu in the Southern Division, in the company of each other, entered as trespassers into the dwelling house of **ANDREW NAIGULEVU**, with intent to commit theft.

COUNT TWO

Statement of Offence

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

Particulars of Offence

GEORGE NUKUNIMATASAWA WAISU and another on the 12th day of February 2022 at Valelevu in the Southern Division, in the company of each other, dishonestly appropriated (stole) 1 x Xbox video game, 1 x Xbox video game controller, 1 x Xbox video game Kinect and 1 x Xbox power cable, the property of **ANDREW NAIGULEVU** with the intention of permanently depriving **ANDREW NAIGULEVU** on the said property.

COUNT THREE

Statement of Offence

RESISTING ARREST: *Contrary to Section 277 (b) of the Crimes Act 2009.*

Particulars of Offence

GEORGE NUKUNIMATASAWA WAISU on the 12th day of February, 2022 at Valelevu in the Southern Division, resisted **PC 5889 RATU RASILI** in due execution of his duty.


2. Satisfied by the fact that you have fully comprehended the legal effect of your pleas and that your pleas were voluntary and free from influence, I now convict you of these three offences as charged in the Information.
3. According to the Summary of Facts, you and your accomplice entered the Complainant's house while he was reading a book in his bedroom, and the Complainant's wife was attending to a work call on Zoom. Your accomplice had first entered the house through the window of the sitting room, and then you entered through the main door. You then stole one Xbox video game, one Xbox video game controller, one Xbox video game Kinect and one Xbox power cable therein. The Police arrested you while you were fleeing from the scene of the crime. You pushed the door of the police vehicle, preventing the Police officer to get off the vehicle and arrest you, thus committing the offence of resisting arrest.
4. This is a breaking of a dwelling house and stealing therein. You broke into this house at night while the occupants were in the bedroom. Crimes of this nature, targeting dwelling houses, undoubtedly affect the entire community. You have instilled fear and insecurity among the people by committing this crime. I, accordingly, find this is a severe offence.
5. Having considered the serious nature of these offences, I now proceed to determine an appropriate sentence for you in line with general principles, objectives, and purposes of sentencing under sections 4 (1) and 4 (2) and 15 of the Sentencing and Penalties Act.
6. All of these offences are founded on the same series of offending. Therefore, it is appropriate to impose an aggregate sentence pursuant to Section 17 of the Sentencing and Penalties Act.

7. The tariff for the offence of Aggravated Burglary was between 18 months to 3 years. The Fiji Court of Appeal in **Avishkar Rohinesh Kumar and Sirilo Vakatawa v The State (Criminal Appeals No AAU 33 of 2018 and AAU 117 of 2019)** stipulated a new tariff range for the offence of Aggravated Burglary, which ranges from 1 year to 12 years. The tariff for the offence of Theft has been stipulated in **Ratusili v State [2012] FJHC 1249; HAA011.2012** (1 August 2012), where Justice Madigan held that:
- i) *For a 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.*
8. The tariff for Resisting Arrest is between 6 to 12 months imprisonment.
9. Considering the nature of the items you have stolen and how you have entered the premises, the level of harm is low; hence, the starting point is three years, and the sentencing range is 1 to 5 years.
10. You are a young first offender. You pleaded guilty to these offences at the first available opportunity. Moreover, you admitted your responsibilities for committing these offences in your caution interview. In doing that, you expressed remorse and repented for committing this crime. Therefore, you are entitled to a substantial discount for your early plea of guilty and good character.
11. Considering the above reasons, I sentence you to 24 months imprisonment as an aggregated sentence for these three counts as charged in the Information. Your sentence is partially suspended, where you shall serve 12 months of your sentence instantly, and the remaining

period of 12 months is suspended for three years. Considering the time spent in custody (nearly a month), you have already served one (01) month. Accordingly, the actual period you have to serve in custody is eleven (11) months imprisonment.

12. If you commit any crime during the period of three (3) years and are found guilty by the Court, you are liable to be charged and prosecuted for an offence according to Section 28 of the Sentencing and Penalties Act.
13. Thirty (30) days to appeal to the Fiji Court of Appeal.




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Hon. Mr. Justice R.D.R.T. Rajasinghe

At Suva

29th November 2022

Solicitors

Office of the Director of Public Prosecutions for the State.

Office of the Legal Aid Commission for the Accused.