

IN THE HIGH COURT OF FIJI

AT SUVA

[CRIMINAL JURISDICTION]

CRIMINAL CASE NO. HAC 186 OF 2023

BETWEEN : **STATE**

AND : **EVINERI BATABUA**
SEBASITIANO VERETI
JOVILISI SEKINONA KANATABUA

Counsel : Mr J Singh for the State
1st & 3rd Accused in Person
Mr J Buakula for the 2nd Accused

Date of Hearing : **20 July 2023**

Date of Sentence : **21 July 2023**

SENTENCE

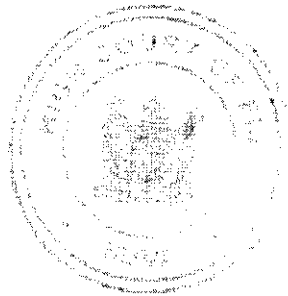
- [1] All three accused pleaded guilty to one count each of aggravated burglary and theft.
- [2] The victim is a 75 year old farmer and residence of Lawaki, Tailevu since birth. On 19 December 2022, the victim and his family went overseas for holidays. His house was unoccupied during the period he was away. When he returned on 6 January 2023, he found his house had been burgled. Entry to the house was gained

through the kitchen window after removing the louvre blades. A number of household items to a total value of \$3105.00 were missing from the house, such as TV and electronic gadgets and tools.

- [3] Police investigation revealed that the three accused were trying to sell some of the stolen properties to some members of the public. The three accused were interviewed under caution. They made full admissions to police. Only the TV was recovered from the person who bought it from the accused.
- [4] The first accused's date of birth is 9 August 2000. He is 22 years old and unemployed.
- [5] The second accused's date of birth is 24 November 1999. He is 23 years old and unemployed.
- [6] The third accused's date of birth is 25 September 2003. He is 19 years old and unemployed.
- [7] The head of their village has provided a written character reference for them. He says that all three accused are actively involved in their respective churches and village activities including the village rugby team.
- [8] All three are young and first time offenders. They entered early guilty pleas and saved court's time and resources. They made full admissions to police. A TV had been recovered. They expressed remorse. Their families have apologized to the victim. These are mitigating factors.

- [9] But a home was burgled and the victim was elderly and vulnerable. He lost properties to a substantial value. These are aggravating factors.
- [10] The burglary was aggravated because it was committed in a company of two or more. The maximum penalty for aggravated burglary is 17 years imprisonment. The maximum penalty for theft is 10 years imprisonment.
- [11] According to Kumar and Vakatawa Guidelines (Criminal Appeals No AAU33 of 2018 and AAU117 of 2019), the court must first assess the level of harm caused by the offence and then determine the applicable starting point and sentencing range.
- [12] There is some evidence to suggest that the house was ransacked but there is no evidence to suggest that the house was damaged. Nor is there any evidence of significant planning or weapons used to carry out the offence. It appears that the house was targeted because it was unoccupied at the time. This was not an organized gang type of offending.
- [13] The level of harm is low. For a lower level of harm, the starting point is 3 years imprisonment and the sentencing range is 1-5 years imprisonment.
- [14] Both offences are founded on the same facts and are of similar character. An aggregate sentence is just and appropriate.
- [15] I pick an aggregate term of 3 years imprisonment as a starting point for all three accused. After adjusting for mitigating and aggravating factors, I arrive at a sentence of 18 months imprisonment for each accused.

- [16] I am mindful that all three accused are young and first time offenders. But youth and previous good character are not a licence to intrude into somebody's privacy and home and steal. This kind of anti-social behaviour is too prevalent amongst the youth in our community. The courts have a duty to rehabilitate young offenders but the courts also have a duty to keep the community safe.
- [17] All three accused are convicted and sentenced to an aggregate term of 18 months imprisonment.
- [18] All three have spent about 1 ½ months in custody on remand.
- [19] I have considered suspension in this case and have decided to partially suspend the sentence. All three accused are to serve 6 months in prison and the remaining 12 months are suspended for 3 years.
- [20] Recovered property is restored to the owner.





Hon. Mr Justice Daniel Goundar

Solicitors:

Office of the Director of Public Prosecutions for the State

1st and 3rd Accused in Person

Legal Aid Commission for the 2nd Accused