

IN THE HIGH COURT OF FIJI
AT SUVA
APPELLATE JURISDICTION
CRIMINAL APPEAL NO. HAA 004 OF 2022S

BETWEEN **THE STATE**

APPELLANT

AND **NAVITALAI TIRITABUA**

RESPONDENT

Counsels: Mr. M. Rafiq for Appellant

 Ms. N. Ali for Respondent

Hearing: 22 September, 2022.

Judgment: 1 December, 2023

JUDGMENT

1. On 7 December 2021, the respondent (accused) appeared in the Navua Magistrate Court, on the following two counts:

"COUNT 1

Statement of Offence

SACRILEGE: *Contrary to Section 305 (a) of the Crimes Act 2009.*

Particulars of Offence

NAVITALAI TIRITABUA *on 21st day of November, 2021 at Calia, Navua in the Central Division, broke and entered into **EMMANUEL ASSEMBLY***

OF GOD CHURCH, a place of worship and stole one Yamaha Keyboard valued at \$1400.00, the property of **EMMANUEL ASSEMBLY OF GOD CHURCH**.

COUNT 2

Statement of Offence

BREACH OF ORDER SUSPENDING SENTENCE: *Contrary to Section 28 (1) of the Sentencing and Penalties Act, 2009.*

Particulars of Offence

NAVITALAI TIRITABUA on 21st day of November, 2021 at Calia, Navua in the Central Division, during the operational period of suspended sentence vide Navua Criminal case file Number 170/20, committed an offence of Sacrilege, an offence punishable by imprisonment.”

2. He waived his right to counsel and said he would represent himself. On count no. 1, he elected to be tried in the Magistrate Court. The charges were read and explained to him in the itaukei language. He said, he understood both counts and pleaded guilty to them. He said, he was not forced or threatened to plead guilty to the charges. The summary of facts were then put to him by the prosecution.
3. Briefly, the facts were as follows. The complainant (PW1), a 53 year old pastor resided in the church compound. Their Assembly of God church was also in the compound. At 7 am on 21 November 2021, a Sunday, a couple came to decorate the church. PW1 came to open the church door. He saw that the church door and window had been broken into. He then checked inside the church. He found that the church’s musical instrument, a keyboard brand Yamaha black in colour valued at \$1,400 was missing.

4. On 20 November 2021, at about 10.30 pm, PW2, a villager of Lobau, saw the accused acting suspiciously with a keyboard in his hand. PW2 knew the boy as the respondent, and they came from the same village. On 21 November 2021, at about 2 pm, the villagers heard the respondent playing with the keyboard. PW4, a fellow villager, later seized the keyboard from the respondent, and reported the matter to police. The police later took the keyboard. The respondent was caution interviewed by police. He admitted the two counts to police. He was later charged and brought before Navua Magistrate Court.
5. The respondent admitted the summary of fact to the court. He later presented his plea in mitigation. He said, the stolen property was recovered. He was 20 years old. He earned \$140 per week. He apologized to the court. He said, he would not re-offend. The matter was adjourned to 14 December 2021 for sentencing.
6. On 14 December 2021, the Navua Magistrate Court issued the following sentences. On count no. 1, after taking into account the aggravating and mitigating circumstances, the court passed a sentence of 18 months imprisonment. On count no. 2, the court also imposed a sentence of 18 months imprisonment. Both sentences were made concurrent to each other, thus a total sentence of 18 months imprisonment. The court then ordered one month of the sentence to be served in prison, and the 17 months balance to be suspended for the next 3 years from 14 December 2021.
7. The State was not happy with the above sentence. They filed their petition of appeal on 17 February 2022. They were out of time by approximately one month.
8. The State's complaint were as follows. On 30 June 2020, the respondent was convicted at Navua Magistrate Court for "Burglary" (Count No. 1) and "Theft" (Count No. 2). He was sentenced to 18 months imprisonment for the first count, and 4

months imprisonment for the second count. The sentences were made concurrent to each other, thus a total sentence of 18 months imprisonment. The court ordered the respondent to serve 3 months in prison, and the balance of 15 months was suspended for 3 years. So, the 15 months suspended sentence was operational from 30 June 2020 to 30 June 2023. The relevant Navua Magistrate Court file was CF No. 170/20.

9. On 14 December 2021, in Navua Magistrate Court file CF 288/21, the respondent was convicted on the two counts mentioned in paragraph 1 hereof. The sentences passed were described in paragraph 6 hereof. The convictions in CF 288/21 were well within the operational period of the sentences in CF 170/20. Yet the learned magistrate imposed another suspended sentence in CF 288/21, when normally an immediate prison sentence was often called for, because the respondent had not learnt from the leniency shown in CF No. 170/20. This is in line with deterrence often called for by section 4 (i) (a), (b), (c) and (e) of the Sentencing and Penalties Act 2009.
10. In this case, the justice of the case calls for an immediate sentence of 18 months imprisonment from 14 December 2021. However, the respondent had been remanded in custody in this case from 30 May 2022 to 30 November 2023, a period of approximately 18 months. In my view, he had served his sentence, and there is no need for any further punishment.
11. Given the above, I allow the State's application for an extension of their time to appeal against the Magistrate Court's decision of 14 December 2021. There is merit in their ground of appeal as shown in paragraph 5 of their Petition of Appeal. The Magistrate Court's 18 month imprisonment sentence for count no. 1 and 18 months imprisonment sentence for count no. 2, both to be concurrent to each other, on 14

December 2021, remains. However, the respondent is to serve the same from 30 May 2022, when he was remanded in custody, to 30 November 2023.



Salesi Temo

Acting Chief Justice

Solicitor for State: Office of the Director of Public Prosecutions, Suva.

Solicitor for Respondent: Legal Aid Commission, Suva.