

**IN THE HIGH COURT OF FIJI**  
**AT SUVA**  
**CRIMINAL JURISDICTION**

**Criminal case No. HAC 193 of 2024**

**BETWEEN** : **STATE**

**AND** : **JOELI NAILATI**

**Counsel** : **Mr S Seruvatu for the State**  
**Ms A Bilivalu for the Accused**

**Hearing** : **29 November 2024**

**Sentence** : **19 December 2024**

**SENTENCE**

[1] Joeli Nailati, you appear today for sentence.

[2] You are charged with the following offence:

*Statement of Offence*

**ARSON:** Contrary to section 362(a) of the Crimes Act 2009.

*Particulars of Offence*

**JOELI NAILATI** on the 9<sup>th</sup> day of July, 2024, at Suva, in the Central Division, willfully and unlawfully set fire to a dwelling house, the property of Lami Town Council.

[3] You have pleaded guilty to the offence.

## Summary of Facts

- [4] On the evening of 9 July 2024, you were high on drugs as a result of smoking marijuana and sniffing glue. You were living a vagrant life and had found a place of refuge under a vacant house owned by the Lami Town Council. It was there that you had got high and then ate some food. It was cold that night so you burned some rubbish to warm yourself. You then left the property while the rubbish was still burning.
- [5] The fire spread to the floor of the house. The National Fire Authority (NFA) were alerted at 8.52pm and arrived at the house at 8.57p.m. They found a considerable amount of smoke inside the building but no fire. They were able to control the matter within 20 minutes. According to the NFA's Fire Investigation Report dated 8 September 2024, the fire caused damage to the floor of the vacant house. The State has provided no indication of the cost to repair this damage. It does not appear from the photographs contained in the report that the damage was significant.
- [6] You were arrested on 10 July 2024. You were interviewed by the police the same day and made full admissions. You cooperated with the police and assisted with a reconstruction of the scene. You were produced in the Magistrates Court on 12 July 2024 and the matter was transferred to this Court. You have been on remand since your arrest. I ordered a psychiatric evaluation to assess your fitness to stand trial. A report was prepared by Drs Balram Pandit and Kiran Gaikwad from St Giles Hospital on 30 October 2024. They assessed you as fit to plead and competent to stand trial. Following receipt of the medical report, you pleaded guilty on 12 November 2024 to the offence of arson. I am satisfied that you did so voluntarily with proper understanding of the consequences of the plea.
- [7] I have considered the summary of facts as admitted by you. I am satisfied that the elements of the offence of arson are established. I, therefore, accept your plea of guilty and I convict you.

## Mitigation

- [8] Your lawyer has provided the following mitigation on your behalf:

- You are only 24 years of age.
- You are single and have no children. You reside with your mother and younger siblings.
- You are a first offender and pleaded guilty at the first opportunity.
- You have a medical condition. You were receiving treatment and medication for the condition at the time of the offending. According to the medical report from St Giles Hospital it is crucial that you abstain from using drugs as well as continue to take your medication.

[9] You had an opportunity to address the Court at the sentencing hearing. You stated that you wish to see your parents because you have not seen them for a long time and you wish to obtain employment.

### **Sentencing Regime**

[10] The maximum penalty prescribed for arson under s 362(a) of the Crimes Act is life imprisonment. The tariff for such offending is 5 to 12 years imprisonment. Perera JA stated as follows in *Nakato v State* [2018] FJCA129 (24 August 2018) as per paragraphs 90 to 93:

*90. The legislation in Fiji clearly indicates the intention to treat arson as a very serious offence by making arson an indictable offence and fixing the punishment for arson as life imprisonment. Even the penalty for the offence of attempt to commit arson under section 363 of the Crimes Act is an imprisonment term of 14 years. In my judgment, the range of 02 to 04 years imprisonment does not reflect the seriousness the legislation intended to attribute to the offence of arson and in fact it defeats the obvious intent of the legislature.*

*91. It is pertinent to note that;*



- a) *The established sentencing tariff for the offence of rape which carries a maximum penalty of life imprisonment when committed against an adult is an imprisonment term between 7 and 15 years (State v Naicker [2015] FJHC 537; HAC279.2013); and an imprisonment term between 10 to 16 years when rape is committed on a child victim. (Anand Abhay Raj v State [2014] FJSC 12).*
- b) *For the offence of manslaughter which carries a maximum penalty of 25 years, the tariff is an imprisonment term between 5 and 12 years. (Vakaruru v State [2018] FJCA 124; AAU94.2014 (17 August 2018))*
- c) *For the offence of aggravated robbery which carries a maximum penalty of 20 years, the lower tariff for a single act is settled as an imprisonment term between 8 and 16 years. (Wise v State [2015] FJSC 7)*

92. *The aforementioned tariffs for the offences of rape, manslaughter and aggravated robbery which carry maximum sentences of life, 25 years and 20 years respectively also suggests that a range of 2 to 4 years imprisonment is not an appropriate tariff for the offence of arson given the maximum penalty of life imprisonment it carries.*

93. *Having considered the views expressed by the courts in the decisions cited above and the aforementioned tariffs, it is my considered view that the tariff for the offence of arson under section 362(a) of the Crimes Decree should be an imprisonment term between 5 to 12 years. In selecting the lower end of 5 years imprisonment, I have taken into account inter alia the nature of the offence under section 362(a) which is unlawfully setting fire to a building or a structure, the natural implications of that offence and the maximum penalty which is life imprisonment. Further, this tariff should be regarded as the range of the sentence on conviction after trial. A sentencer may inevitably arrive at a final sentence which is below 5 years imprisonment in applying the two-tier approach unless the aggravating circumstances are quite substantial. If the final sentence reached is one that is below 3 years imprisonment, then it would be at the discretion of the*

*sentencer to opt for any sentencing option as provided under the Sentencing and Penalties Act.<sup>1</sup>*

### **Head Sentence**

- [11] In assessing the objective seriousness of your offending in this matter, I have considered the maximum sentence prescribed for the offence, the degree of culpability, the manner in which you committed the offence and the harm caused to the owner of the house by the offending. I give due cognizance to the sentencing guidelines stipulated in s 4 of the Sentencing and Penalties Act 2009. In particular, I note the tariff of 5 to 12 years. In my view, this matter sits at the low end of the tariff, and, therefore, an appropriate starting point is 5 years imprisonment.
- [12] The aggravating factor present here is the intervention of the National Fire Authority. The fire caused by your conduct placed NFA officers at risk. Fortunately, by the time the officers arrived there was only smoke emanating from the fire. I add six months for this aggravating factor, taking your sentence to 5½ years imprisonment.
- [13] The mitigating factors present here include that you are young, being only 24 years old, and that you are a first offender. I deduct 2½ years for mitigating factors, leaving a balance of 3 years (36 months) imprisonment.
- [14] In *Quray v State* [2015] FJSC 15 (20 August 2015) the Supreme Court stated:

*[54] There is no pronouncement of this Court on the question of the discount to be given for a guilty plea made at a very early stage, although this aspect of the matter was discussed by Madigan JA in his concurring opinion in Rainima v The State [2015] FJCA 17; AAU0022.2012 (27 February 2015) at paragraph [46] where his Lordship was constrained to observe as follows:-*

*"[46] Discount for a plea of guilty should be the last component of a*

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<sup>1</sup> My emphasis.

*sentence after additions and deductions are made for aggravating and mitigating circumstances respectively. It has always been accepted (though not by authoritative judgment) that the "high water mark" of discount is one third for a plea willingly made at the earliest opportunity. This Court now adopts that principle to be valid and to be applied in all future proceedings at first instance."(Emphasis added)*

[15] I accept that you pleaded guilty at the first opportunity and that you cooperated fully with the police after your arrest. You are, therefore, entitled to the full one-third (12 months) remission, resulting in a head sentence of 2 years (24 months) imprisonment.

#### **Actual sentence**

[16] Pursuant to s 24 of the Sentencing and Penalties Act, the period that an offender spends in remand awaiting trial shall be considered as time already served, unless the Court otherwise orders. You have already been on remand since 10 July 2024, a period of just over 5 months. I make a deduction for time already spent on remand, resulting in a sentence of 1 year 7 months (19 months).

[17] I now consider whether this is an appropriate case to impose a suspended sentence. Section 26 of the Sentencing and Penalties Act reads:

(1) *On sentencing an offender to a term of imprisonment a court may make an order suspending, for a period specified by the court, the whole or part of the sentence, if it is satisfied that it is appropriate to do so in the circumstances.*

(2) *A court may only make an order suspending a sentence of imprisonment if the period of imprisonment imposed, or the aggregate period of imprisonment where the offender is sentenced in the proceeding for more than one offence,—*

*(a) does not exceed 3 years in the case of the High Court; or*

*(b) does not exceed 2 years in the case of the Magistrate's Court.*

[18] In *Nariva v State* [2006] FJHC 6 (9 February 2006) Shameem J noted:



*The courts must always make every effort to keep young first offenders out of prison. Prisons do not always rehabilitate the young offender. Non-custodial measures should be carefully explored first to assess whether the offender would acquire accountability and a sense of responsibility from such measures in preference to imprisonment.<sup>2</sup>*

- [19] In my view, your chances of rehabilitation are high. You are a first offender and still young. Your conduct from the time you were arrested demonstrate that you understand that your actions were wrong. I, therefore, consider it is appropriate to suspend your sentence. I will suspend your sentence for 3 years. What this means is that if you commit any crime punishable by imprisonment during the suspended operational period of 3 years and you are found guilty of the crime by a court, then you are liable to be charged and prosecuted for an offence according to s 28 of the Sentencing and Penalties Act of 2009. If this happens, your sentence of imprisonment of 1 year and 7 months will be restored.
- [20] Finally, I am also satisfied that you require ongoing medical treatment and care to protect both yourself and the community. I will make orders that you continue to receive treatment and care from St Giles Hospital.
- [21] Mr. Nailati, would you please stand.
- [22] I make the following orders:
- i. I sentence you to imprisonment for 1 year and 7 months. Your sentence is suspended for a period of 3 years.
  - ii. You are to report to St Giles Hospital each month for medical assessment beginning in January 2025 and each month thereafter until the term of your suspended sentence of 3 years ends. St Giles Hospital is to prepare a report for the Court every 6 months advising whether you are attending the hospital each


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<sup>2</sup> I note that this approach has been applied up to the present; see *State v Bola* [2023] FJHC 63 (15 February 2023), *State v Tuiraviravi* [2023] FJHC 311 (18 May 2023), & *State v Tokabe* [2024] FJHC 156 (8 March 2024).

month as ordered by the Court and the status of your compliance with your medical treatment.

- iii. You have 30 days to appeal to the Court of Appeal.



  
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**D. K. L. Tuiqereqere**  
**JUDGE**

**Solicitors:**

Office of Director of Public Prosecutions for the State

Office of Legal Aid Commission for the Accused