

IN THE HIGH COURT OF FIJI AT SUVA
CRIMINAL JURISDICTION

CRIMINAL CASE NO: HAC 410 of 2022

STATE

-v-

ISIMELI BATIBALEI

Counsel : Ms. Dugan K for State
: Accused in Person

Date of Sentence : 13th January, 2025

SENTENCE

1. **ISIMELI BATIBALEI** you pleaded guilty on your own accord to the following charges produced below and convicted accordingly as charged:

First Count

Statement of Offence

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

Particulars of Offence

ISIMELI BATIBALEI and Another on the 7th November, 2022 at Suva in the Central Division, in the company of each other, entered into the property of **SCORPION FIJI STORE**, as trespassers, with intent to commit theft therein.

Second Count

Statement of Offence

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

Particulars of Offence

ISIMELI BATIBALEI and Another on the 7th November, 2022 at Suva in the Central Division, in the company of each other, dishonestly appropriated (stole) **48 x**

Under Armor brand shorts, 45 x Nike brand shorts, 73 x Muscle brand vests, 76 x assorted pairs of basketball shorts and vests, 77 x Mens' side sling bags, the property of SCORPION FIJI STORE with intention to permanently deprive SCORPION FIJI STORE of the said property.

2. You also admitted to the summary of facts read and explained to you. The facts revealed that Saturday 5th day of November 2022 at around 1700hrs (5:00pm) Wen Fu Chen (PW1) with the help of his employees, had closed his shop namely Scorpion Fiji located along Nina Street in Suva. When they closed the shop, all the clothes were hung accordingly to its sizes. There was no business operation the next day since it was Sunday.
3. On Monday 7th November 2022, at around 7.00am, PW1 received a message from one of his employees that the shop has been broken into. PW1 quickly checked his phone as the CCTV in the shop was connected to his phone, and saw that two unknown men had entered the shop by breaking the glass door and have stolen some clothes in the early hours at around 4.26am.
4. PW1 then reported the matter and according to him the total value of items were worth \$9214.17. Further enquires was conducted and it was found that Isoa Tulega (PW2) who was a taxi driver, driving taxi registration LT 6965 was making his way to Robertson Road from Rodwell Road when he heard someone calling for a taxi. PW2 drove towards Nina Street and stopped where two unknown men were standing. PW2 recalled that both men boarded the taxi but he could not identify them properly. He saw that they have loaded some clothes with hangers on them and some bags into the taxi. Those two unknown man had told PW2 to drive them to Nadonumai where he dropped them off at the Feeder Road.
5. On the 11th of November, 2022 PC 5857 Stefania Lesivou (PW6) had uplifted the CCTV footage of the incident from Scorpion Fiji at Nina Street.
6. Furthermore, on the 19th of November 2022 PC 6874 Kelemedi (PW3) and SC 4143 EPI (PW4) were on patrol at Nina Street decided to visit Scorpion Fiji Shop as they were aware of the break in. PW 1 showed them the CCTV Footage and both of them were able to identify the first person who entered shop as the Accused (A1) and have asked PW 1 to take them in his vehicle to search for A1. They all went to Nakasi Police Station to seek their assistance; they were told that A1 was known to them so with their assistance they were escorted by the Nakasi Police vehicle to Sarava settlement.
7. They were able to locate A1 who was at his house. The Accused admitted that it was him and another who committed the offence. A1 was wearing a Rasta coloured Bob Marley vest and shorts which were identified by PW1 as stolen from his shop. Also 1 x Chicago Muscle vest, 2 x Bob Marley Muscle vest, 2 x Bob Marley shorts, 1 x Net Mar shorts and 1 x Jordan Side bag (black & blue) were recovered from A1's house.
8. A1 was then arrested on the 19th of November 2022 from his resident and was escorted to Totogo Police Station whereby he was cautioned by D/CPL 3606 Nacanieli (PW5) whereby he admitted to the allegation made against him. A1 was then interviewed under caution on the same day (19/11/22) where he admitted to the allegations.

Conviction

9. The Court is aware that the Accused understands the implication of his plea and finds him guilty accordingly. The Accused is convicted of one count of Aggravated Burglary contrary to section 313(1)(a) of the Crimes Act, 2009 and to one count of Theft pursuant to section 291(1) of the Crimes Act, 2009.

Sentencing Guidelines

10. Before sentencing the Accused, this court has considered the sentencing guidelines pursuant to **sections 4(1), 4(2) and 15** of the **Sentencing and Penalties Act, 2009**.

Maximum Penalty and Tariff

11. The maximum penalty of the offence of aggravated burglary is 17 years imprisonment.
12. In the Fiji Court of Appeal case of **Kumar and Vakatawa** [2022] FJCA; AAU33.18 and AAU117.19 (24 November 2022), the Court has outlined the starting point and tariff. This offence falls under the low harm of Aggravated Burglary whereby the starting point is 3 years and the sentencing range is from 1 year to 5 years.
13. 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.”*

Several offences based on same facts

14. **Section 17** of the **Sentencing and Penalties Act 2009** stipulates that;

“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.”

15. The count of Aggravated Burglary and the one count of Theft which you have been convicted are offences founded on the same facts and are of similar character. In accordance with section 17 of the Sentencing and Penalties Act, I consider it just and appropriate to impose an aggregate sentence for the three offences having the Aggravated Burglary count as the base sentence as it is the more serious of the offences.

Starting Point

16. In considering the gravity and objective seriousness of the offence of Aggravated burglary, in my opinion it is reasonable to pick 3 years' imprisonment as the starting point of the aggregate sentences for this offence. However, the final sentence will depend on the mitigating and aggravating factors which I will now proceed to consider.

Aggravating factors

17. As for the aggravating factors. I observe the following aggravating circumstances of your offending:
 - a. Damaging of the complainant's property to gain entry to the shop.
18. Based on the above factor, your sentence is enhanced by 1 year and we arrive at 4 years imprisonment.

Mitigating Factors

19. In considering your mitigating factors, 1 year is reduced from your sentence. Your sentence is 3 years imprisonment.

Early Guilty Plea

20. You took a plea of guilty at the earliest opportunity. However, the delay in your sentence was due to the error in your record of previous convictions.
21. Your sentence is further reduced by 1 years and your final sentence is 2 years imprisonment.

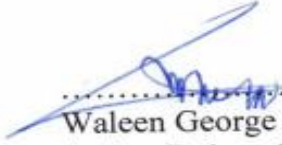
Sentence

22. The two offences you are convicted of are founded on the same facts. Therefore, in view of the provisions of section 17 of the Sentencing and Penalties Act, I consider it appropriate to impose an aggregate sentence of imprisonment against you for the two offences you have committed.
23. Your head sentence is 2 years imprisonment.
24. You were remanded in custody since 19 November 2022 until granted bail by this court on 29 November 2024. You were in custody for 2 years.
25. It is deemed that you have already served your sentence of 2 years imprisonment.

Period of Appeal

26. 30 days to appeal to the Court of Appeal




Waleen George
Acting Puisne Judge

Dated at Suva this 13th day of January, 2025.

**Solicitors: Office of the Director of Public Prosecution for the State
Accused in Person**