

**IN THE MAGISTRATES' COURT OF FIJI  
AT TAVUA  
CRIMINAL JURISDICTION**

Criminal Case No: 134 - 2019

**STATE**

-v-

**JOSEVA NATAVALAWE**

Before : RM Fotofili L.  
For Prosecution : WPC Chand A. [ Police Prosecution ]  
Accused : In Person  
Date of Sentence : 22<sup>nd</sup> October 2019

**SENTENCE**

1. **JOSEVA NATAVALAWE**, you have elected a Magistrates' Court trial and pleaded guilty to the following charge:

**Count One**

*Statement of Offence*

**BURGLARY**: Contrary to section 312 ( 1 ) of the *Crimes Act of 2009*.

*Particulars of Offence*

**JOSEVA NATAVALAWE**, on the 14<sup>th</sup> day of April, 2018 at Vatukoula in the Western Division broke and entered into the dwelling house of **JALESİ MATAWALU**, with intent to commit felony namely theft.

**Count Two**

*Statement of Offence*

**THEFT**: Contrary to section 291 of the *Crimes Act of 2009*.

*Particulars of Offence*

**JOSEVA NATAVALAWE**, on the 14<sup>th</sup> day of April, 2018 at Vatukoula in the Western Division, stole 60 ltrs of kerosene valued at \$100 the property of **JALESİ MATAWALU**.

2. You wanted to be represented by the Legal Aid Commission. You were given between the 4<sup>th</sup> of June 2019 and the 2<sup>nd</sup> of July 2019 to sort this out. You still had not. Even though you were in remand, I did not find that to be a total impediment to completing or lodging your application to Legal Aid Commission considering the time given to you. I have proceeded to deal with your case with you in person as sufficient time had been given to you.
3. I am satisfied that your guilty plea to both counts is voluntary and that you understand the consequences of your plea. The evidence tendered in support of your admission also supports your plea.
4. I have found you guilty of both counts and I convict of you of both counts as reflected in the charge accordingly.
5. You are 25 years old. You entered the victim's store room and stole 4 x 15 litres of kerosene. You wanted money to buy more alcohol.
6. The matter was reported and you were evading arrest for some time. You even went to Sigatoka to avoid being arrested by police. Once arrested and interviewed by police, you admitted to police that the victim is your uncle. Your house is about 60 meters away from your uncle's house. You went to your uncle's house and stole 4 gallons which had about 10 litres of kerosene in them respectively. You took the kerosene from inside the bathroom. The bathroom is outside your uncle's main house. You sold all the kerosene you stole for a total sum of \$40. You were drunk at the time when you went to steal.
7. You were remanded since the 4<sup>th</sup> of June 2019 or since you were first produced by police. You had a theft case pending at Sigatoka and you indicated early that you had committed this offence. That was the primary reason you were remanded. You have also admitted and which is contained in the facts, that you were evading police after committing this offence. You have been in remand now for about 4 months and 17 days. You had to be and you were rightly remanded.
8. You were supposed to be sentenced on the 3<sup>rd</sup> of September 2019 but due to no fault of yours, the case was adjourned to today for sentence.
9. I will only consider the time you have spent in remand between the 3<sup>rd</sup> of September 2019 until today as time served. I approximate that to 1 month and 18 days imprisonment.

10. You have no prior conviction.
11. You submit in your written mitigation that you regret committing the offence and you are remorseful. You seek forgiveness. You promise not to reoffend. Your wife and 3 year old daughter need your support.

#### **AGGREGATE SENTENCE**

12. The offences or both counts were committed in the course of the same transaction or founded on the same facts.
13. Pursuant to section 17 of the **Sentencing and Penalties Act 2009**, I will impose an aggregate sentence on you for both the counts.
14. Since burglary is the more serious of the two counts, I will use that as a guide when passing your aggregate sentence.

#### **MAXIMUM SENTENCE**

15. The maximum sentence a court can impose for burglary is up to 13 years imprisonment.

#### **SENTENCING RANGE or SENTENCING TARIFF**

16. The sentencing tariff for burglary is between 20 months to 6 years imprisonment  
**State v Prasad** - Sentence [ 2017 ] FJHC 761; HAC 254.2016 ( 12 October 2017 ).

#### **STARTING POINT**

17. Based on the objective seriousness of the offence, I select an aggregate starting point of 2 years and 4 months imprisonment.

### **AGGRAVATING FEATURES**

18. There was a domestic relationship in existence. This was your uncle that you stole from.
19. You were drunk at the time.
20. You were evading police arrest.
21. You sold the stolen fuel for \$40.
22. Your aggregate sentence is increased to 4 years and 2 months imprisonment.

### **MITIGATION**

23. You will get some discount for having a past good history.
24. You cooperated with police during your interview.
25. You have a family to support.
26. You are remorseful.
27. Your sentence is reduced to 2 years and 10 months imprisonment.

### **GUILTY EARLY**

28. Your sentence is further reduced for your early guilty plea.
29. Your sentence now sits at 1 year and 11 months imprisonment or 23 months imprisonment.

## **FINAL SENTENCE**

30. You will receive an aggregate sentence for both counts.
31. Your sentence is aimed at deterrence and is to punish you adequately.
32. **You are sentenced to an aggregate 23 month imprisonment term.**
33. As I have explained above, I will only consider **1 month and 18 days of your time in remand as time served and I will deduct this time from your sentence.**
34. **You have 21 months and 10 days imprisonment remaining.**
35. I have the discretion to suspend your sentence whether in whole or in part.
36. Primarily considering the circumstance of the offence and your circumstance and the objectives of sentencing, **I order that 12 months of your remaining sentence is to be suspended for the next 2 years.**
37. Do not commit any other offence in the next 3 years, if you do, this 12 months imprisonment term held in waiting may be activated.
38. **You will serve 11 months and 10 days imprisonment immediately.**
39. A domestic violence restraining order [ DVRO ] with section 27 standard non molestation conditions is imposed on the defendant for the benefit and protection of the victim or his uncle.
40. The defendant is warned or notified that if he breaches any of the DVRO conditions, he may be charged with another offence.
41. The prosecution is to notify the victim or the uncle of the defendant of the DVRO.
42. 28 days to appeal.



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Lisiate T.V. Fotofili

**Resident Magistrate**

Dated at Tavua this 22<sup>nd</sup> day of October, 2019