

IN THE RESIDENT MAGISTRATE'S COURT OF REBUPLIC OF FIJI AT SUVA

CRIMINAL JURISDICTION

Juvenile Case No: 86/2021

The State

V

S R

For the State : WPC Radinisau
For the Juvenile : Ms. Marama (Legal Aid Commission)
Pleaded On : 07th March 2022

PUNISHMENT

1. The name of the Juvenile is suppressed and he will be referred to as "S R".
2. The above named Juvenile has been charged with following two counts:

Count 01:

Burglary : contrary to section 312(1) of the Crimes Act 2009 that you S R between 09th day of July 2021 to 10th Day of July 2021 at Samabula in the Central Division, entered in to the property of Viti Builders and Hires as a trespasser with the intend to commit theft.

Count 02:

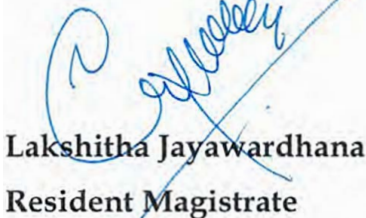
Theft: contrary to section 291(1) of the Crimes Act 2009 that you S R on the 09th day of July 2021 to 10th day of July 2021 at Samabula in the Central division, dishonestly appropriate (stole) several items to the total value of \$ 10,085.00 the property of Viti Builders and Hire, with the intent of permanently deprived the said Viti Builders and Hire of their property.

3. On 07th of March, 2022 you have pleaded guilty to the above counts in the charge against you and in the presence of your counsel and your guardian. You have admitted to the Summary of Facts read over to you. I therefore consider that you have pleaded guilty to the charge against you on your own free will, without any influence and pleaded unequivocally.
4. As per summary of facts admitted by you, I am satisfied that all the elements of the above mentioned offenses had been established beyond any reasonable doubt. Accordingly, I find you S R guilty as charged.
5. Maximum penalty for the offence of **Burglary** is 13 years imprisonment. Tariff for this offence is settled in **Waqavanua v State; HAA013.2011 (6 May 2011)**. Justice Madigan has held that the acceptable tariff limit for burglary under the Crimes Act should be between twelve months to three years of imprisonment.
6. Maximum penalty for **Theft** is an imprisonment term of 10 years and the accepted tariff for this offence may vary from 2 to 09 months imprisonment terms or sentences from 09 months onwards as per **Ratusili v. State [2012] FJHC 1249; HAA011.2012 (01 August 2012)**. As per the case of **Waqava v State; HAA017.2015 (5 October 2015)** the sentence may vary from 04 months to 03 years imprisonment. 03 months to 12 months imprisonment as settled in the case of **State v Baleinabodua [2012] FJHC 981; HAC145.2010 (21 March 2012)**.
7. I have considered section 04 and 15 of Sentencing and Penalty Act 2009 and section 21,30 and 32 of the Juveniles Act in determining the suitable punishment to you. I further considered your general conduct, home surrounding, school and work records, based on the facts and information available to me in the case record before I had made my decision on your punishment. Both concepts of deterrence and rehabilitation have been considered.

8. Both count 01 and count 02 offences had been committed in the same transaction and thus the count 01 offence of Burglary had considered as the base offence in determining your punishment.
9. This is a pre-planned action and you have committed this offence after few days that this Court had enlarged you on bail on 30-06-2021 in case No: 79/2021; those are aggravating factors in these offences.
10. I have considered the mitigation submissions made by your counsel. Those are including your personal and social circumstances, your express remorse and the guilty plea that you have made at your earliest given opportunity. You have been granted appropriate discounts for the above migratory factors including a separate 1/3 deduction of your prison term for your early guilty plea.
11. Considering the objective seriousness of the base offence, I take 18 months as the starting point. I add 12 months for the aggravating factors and now your punishment term stands as 30 months. I deduct 03 months for your general mitigation facts and further deduction of 1/3 from the remaining time and therefore your final imprisonment period now is 18 months. You were not remanded for this offence, thus you will not be getting any more deductions from your imprisonment term.
12. With regard to the second count of theft, I fix 06 months as starting point. No further adjustments shall be made to this starting point as all adjustments on aggravating and mitigating factors have been made to the base offence. Thus the final punishment term for second count shall be 06 months imprisonment.
13. The aggregate punishment term for both counts is therefore 24 months. However, considering that both the offences had been committed on the same time and in the same transaction; in accordance to the totality theory, your aggregate final punishment term shall be 18 months imprisonment.

14. In pursuant to Sec.26 of the Sentencing and Penalties Act, this court has the power to suspend your punishment term as it is not exceeding 02 years of imprisonment.
15. I shall consider the following guideline cases on suspension of sentences; **DPP v Jolame Pita (1974) 20 FLR 5, DPP v Saviriano Radovu (1996) 42 FLR 76 and Deo v State (2005) FJCA 62.**
16. I shall consider the overall facts before this court including the aggravating factors and the mitigating facts submitted on your behalf and in line with the above case law and section 4 of the Sentencing and Penalties Act, to assess whether there are any special circumstances to justify a suspension of your sentence. I find that you are not a first time offender, you have committed this offence while you were on bail for the case No. 79/2021. However considering your young age, remorsefulness and your prospect to rehabilitate which I consider as special circumstances in this case and thus, decide to partly suspend your punishment term.
17. You will now be explained the meaning, scope, and the consequences of a suspension in your preferred language. Having done so, I suspend fifteen (15) month's period of your punishment term for a period of five (05) years and balance three (03) month's period to be served in custody.
- 18. Final outcome of your punishment is as follows: Eighteen (18) months imprisonment out of which Fifteen (15) months is suspended for a term of Five (05) years. Balance Three (03) months period to be served in custody forthwith.**
19. You have 28 days to appeal.




Lakshitha Jayawardhana
Resident Magistrate

At Suva on this 17th day of March 2022.