



HIGH COURT OF KIRIBATI

*Criminal Case No 34/2017
Criminal Case No 24/2018
Criminal Case No 32/2018
Criminal Case No 40/2018*

THE REPUBLIC

v

TIOTI TEWEIA

*Pauline Beiatau, Director of Public Prosecutions, for the Republic
Angitonu David for the accused*

Date of sentencing: 18 February 2019

SENTENCE

- [1] Tioti Teweia has pleaded guilty to the following charges under the *Penal Code*: 1 count of burglary, contrary to section 292(a); 3 counts of breaking, entering and committing a felony, contrary to section 293(a); and 2 counts of simple larceny, contrary to section 254. The charges relate to 4 separate matters, and are charged over 4 separate informations. I will deal with the charges chronologically.
- [2] At around 1:00am on 14 February 2017 the prisoner broke into a store owned by Mootte Kabiriera in Teaoaraereke village. He stole mobile phone recharge cards with a total face value of \$195, \$30.50 in cash and 5 watches, valued at \$65 each. The recharge cards and the watches were recovered. This gave rise to the first of the breaking and entering charges.
- [3] Just before midnight on 1 August 2017 the prisoner and 2 others broke into the ATHKL store in Betio. There they stole mobile phones, \$72 worth of recharge cards and a tablet, with a total value of \$5948. The phones and tablet were later recovered. This led to 1 count of breaking and entering and 1 count of simple larceny. The 2 men who are alleged to have been the prisoner's companions on that evening were only charged recently and are yet to enter a plea.
- [4] At around midday on 16 August 2017 the prisoner broke into the Teaoaraereke house of Allie Johnny and stole a laptop computer, an external hard drive and a

torch. The stolen items were valued at around \$2000. The computer and hard drive were subsequently recovered. For this the prisoner is charged with 1 count of breaking and entering.

- [5] At 2:00am on 16 April 2018 the prisoner broke into the house of Totene Anterea in Bwangantebure. No one was home. He stole a laptop computer, a mobile phone and a tablet, with a total value of \$2169. The items were later recovered. The count of burglary and the remaining larceny charge stem from this matter.
- [6] It is relevant that, in the middle of this crime wave, on 15 November 2017 the prisoner pleaded guilty before the Chief Justice to a single count of simple larceny, which had occurred on 7 October 2016. He was sentenced to 3 months' imprisonment. It is a shame that he was not dealt with at that time for the 3 other matters that were then pending.
- [7] There was some delay in securing legal representation for the prisoner. That was sorted out, and on 23 November 2018 counsel for the prisoner advised that her client would be pleading guilty to the Moote Kabiriera and Allie Johnny charges, but not guilty to the ATHKL charges. When those charges came on for trial on 17 December, counsel for the prisoner informed the court that her client would now be pleading guilty. The Totene Anterea charges were filed on 20 December, and the court was advised of the prisoner's intention to plead guilty to those charges on 7 February 2019.
- [8] The prisoner is 35 years of age. He is married, with 6 children aged between 1 and 11 years. He leads a subsistence lifestyle. By way of an explanation for his actions, the prisoner says that he was under considerable pressure to provide for his family. He had been drinking alcohol on each of the occasions, but counsel submits that this was to work up the courage to commit the offences and he was not committing the offences to get money to buy more alcohol.
- [9] The prisoner has previous convictions. In November 2009 he was convicted of the offences of common nuisance and escaping lawful custody, for which he was sentenced to imprisonment for 6 months, suspended for 1 year. In November 2017 he received the 3 month sentence referred to in [6] above.
- [10] In determining the appropriate sentence for the prisoner, I am mindful of the approach to sentencing recommended by the Court of Appeal.¹ The maximum penalty for burglary is imprisonment for life, for breaking and entering 14 years' imprisonment, and for simple larceny 5 years' imprisonment. As a consequence of the prisoner's conviction in November 2017, the maximum penalty for the larceny count from April 2018 is increased to imprisonment for 10 years. In order to avoid what might otherwise be a crushing sentence were I to treat all matters

¹ *Kaere Tekaei v Republic* [2016] KICA 11, at [10].

separately, I will apply the totality principle, and impose a single sentence in respect of all counts that I consider meets the gravity of the prisoner's offending.

- [11] Neither counsel disputes that a lengthy term of imprisonment is warranted in this case. The prisoner's absolute disregard for the property of others is deplorable. It is said in Kiribati that the only crime worse than murder is theft. In a communal society, where security is non-existent, respect for the belongings of others is at the core of our need to maintain peace and harmony in our communities. The courts must demonstrate to any person contemplating embarking on a career of thieving that an habitual thief will be dealt with severely.
- [12] Counsel for the prosecution submits that the prisoner's conduct warrants a sentence of at least 5 years' imprisonment, and perhaps as high as 10 years. She further submits that I should exercise my power under section 37(1) of the *Penal Code* and order that the prisoner be returned to his home island of Tabiteuea North after he has served his sentence. A residence order can be made for a period of up to 1 year.
- [13] In her submission, counsel for the prisoner argues that, taking all aggravating and mitigating factors into account, an appropriate sentence for her client would be no more than 4 years. She strongly resists the call for a residence order.
- [14] There is no doubt that this is a serious case. I am of the view that, had I been dealing with the prisoner for all of these matters following a trial, an appropriate starting point would be a sentence of imprisonment for 7 years.
- [15] I consider that there are no particular aggravating features to this offending that have not already been taken into consideration in arriving at the starting point. While the prisoner does have previous convictions, the ones from 2009 are fairly minor. The 2017 conviction is taken into account through the longer maximum sentence for the second of the larceny charges.
- [16] As far as mitigating factors are concerned, I am prepared to consider his pleas as having been made at an early stage, for which he is entitled to a significant reduction in sentence. While the total value of the property stolen is significant, most of the items have been recovered, sometimes with the assistance of the prisoner. I am satisfied that he is suitably remorseful for his actions. For these matters I reduce his sentence by 2 years.
- [17] I take into consideration the fact that the prisoner has been in custody awaiting sentence since 28 September 2018, a period of almost 5 months. The prisoner's sentence is reduced by a further 10 months, to take account of the effect that the rules concerning parole will have on his ultimate sentence.

- [18] The prisoner is convicted on his pleas of guilty. Taking all of the above matters into account, on all counts he is sentenced to imprisonment for a total of 4 years and 2 months. The sentence is to run from today.
- [19] I decline to make the residence order sought by the prosecution. The sentence of imprisonment by itself will impose considerable hardship on the prisoner's family. Ordering that he be sent to Tabiteuea North at the conclusion of his prison term will only make it worse for them. Having said that, I encourage the prisoner, once he is released, to consider moving his family to his home island voluntarily. In my experience, those who lead a subsistence lifestyle find it much easier to live comfortably on the outer islands than in the urban environment of South Tarawa.


Lambourne J
Judge of the High Court

