HIGH COURT OF KIRIBATI

Criminal Case Nº 24/2018

THE REPUBLIC

v

TEANG TAITAI

Teanneki Nemta for the Republic
Raweita Beniata for the prisoner

Date of sentencing: 3 May 2019

SENTENCE

[1] Teang Taitai has pleaded guilty to simple larceny, contrary to section 254 of the *Penal Code*, and breaking, entering and committing a felony, contrary to section 293(a) of the *Penal Code*. He was charged jointly with Tioti Teweia, who was sentenced (for these and several other offences) on 18 February. A third person who had been with the prisoner and Tioti on the night in question was also charged, but the Attorney-General has entered a *nolle prosequi* with respect to him.

[2] The offences were committed before midnight on 1 August 2017. Tioti and the prisoner were walking with their friend Been along the road past the ATHKL store in Betio. According to the prisoner, Tioti forced a hole in the fence and broke open the door to the store. Tioti and the prisoner then entered the store and stole mobile phones, $1072 worth of recharge cards[1] and a tablet, with a total value of $5948. While the phones and the tablet were later recovered, the recharge cards were not.

[3] There was some early misunderstanding as to whether the prisoner should be sentenced only with respect to the things that he personally stole. His share of the items stolen was 3 mobile phones, valued at $900, and $1000 worth of recharge cards. I pointed out to counsel that such an approach would be wrong. When 2 or more people embark on a joint criminal enterprise,

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[1] Note that, in the agreed summary of facts for the sentencing of Tioti Teweia, the value of the stolen recharge cards was given as $72. It is now accepted by both prosecution and defence that that figure was wrong.

each offender is equally liable for the crimes committed (see sections 21 and 22 of the *Penal Code*). It is irrelevant when considering liability that the proceeds may have been distributed unevenly among the co-offenders. Each offender will be liable for all of the property stolen, not just their share of the proceeds. There may be occasions where a disparity in the distribution of the proceeds of a crime may lead to co-offenders receiving different sentences for the same offence, but that does not alter the principles concerning the liability of participants in a joint criminal enterprise. The prisoner pleaded guilty to, and is to be sentenced for, the theft of property valued at $5948.

[4] The prisoner was born in 1993, so was 23 or 24 years of age at the time of the offences. He is not presently married. The prisoner has a son from a previous relationship but his counsel advises that there has been no contact with the child since about 2009. His formal education ended after Form 1. He had been employed as a salesman with Coral Ace until he was taken into custody a month ago. Counsel for the prisoner submits that his client was intoxicated on the night in question, and heavily influenced by Tioti, who was both older and more experienced. The prisoner has no previous convictions, and he admitted his actions in a statement to police shortly afterwards.

[5] In determining the appropriate sentence for the prisoner, I am mindful of the approach to sentencing recommended by the Court of Appeal.[2] The maximum penalty for breaking and entering is imprisonment for 14 years, and 5 years' imprisonment for simple larceny. I intend to apply the totality principle and impose a single sentence in respect of both counts that I consider meets the gravity of the prisoner's offending.

[6] Counsel for the prosecution submits that a custodial sentence is warranted in this case. This is conceded by counsel for the prisoner. As I remarked when sentencing Tioti in February:

> 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.[3]

[7] In all the circumstances, I am of the view that an appropriate starting point in this case is a sentence of imprisonment for 18 months.

[8] The fact that the offences were committed in company and late at night are aggravating factors. For this I increase the prisoner's sentence by 3 months. I do not accept the submission from counsel for the prosecution that there was any evidence of pre-planning.

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

3 *Republic* v *Tioti Teweia* [2019] KIHC 31, at [11].

[9] As for mitigating factors, the prisoner has no previous convictions. He co-operated with police and pleaded guilty (although the plea to count 2 came very late in the day). For these matters I will reduce his sentence by 5½ months.

[10] There is no suggestion that there has been an unacceptable delay in the prosecution of this case.

[11] The prisoner has spent 31 days in pre-sentence custody. On a short sentence, taking into account the remission ordinarily allowed under section 56(1) of the *Prisons Ordinance* (Cap.76) for "industry and good conduct", that is the equivalent of a 45-day sentence. I therefore reduce the prisoner's sentence by a further 45 days.

[12] Taking all of the above matters into account, the prisoner is convicted and sentenced to be imprisoned for a period of 1 year and 2 months. I gave some consideration to suspending the sentence, but decided against doing so. The suspension of a sentence of imprisonment should have some direct benefit for the offender by providing an incentive to avoid reoffending. The purpose of suspension is not just to free a person who should otherwise be imprisoned. In this case I see no compelling reason to suspend the prisoner's sentence. He is a first offender and relatively young but this must be weighed against the seriousness of his offending. The sentence is to run from today.

Lambourne J
Judge of the High Court