

IN THE HIGH COURT OF FUJI
AT SUVA
APPELLATE JURISDICTION

CRIMINAL APPEAL CASE NO.: **HAA 63/2010 AND HAA 64/2010**

BETWEEN: **SALACIELI BATIMOKO**

Appellant

AND: **THE STATE**

Respondent

Counsels: In Person - For Appellant
 Ms. Tikoisuva - For Respondent

Date of Hearing : 10th December, 2010.

Date of Sentence : 10th December, 2010.

JUDGEMENT

The appellant appeals against a sentence of two years' imprisonment imposed for Warehouse Breaking Entering and Larceny.

The brief facts of the case are that, together with two others, the Appellant broke into commercial premises and stole 27 gas cylinders valued at \$7700. Subsequently ten of the cylinders were recovered. When the Appellant was arrested he resisted arrest and he was sentenced to three months' imprisonment for that offence which was ordered to run concurrently to the two years.

In the course of the proceedings the Appellant was also in breach of his bail and remained at large for approximately two weeks; he was sentenced to 10 days for this offence and, again, the sentence was ordered to run concurrently.

I am not entirely sure how or why it happened but his two Co-Accused appeared before a different magistrate. They pleaded guilty at the first opportunity; one of the Co-Accused was

of previous good character, the other not. However, they were both dealt with by means of suspended sentences of imprisonment.

It is this fact that has led the appellant to feeling aggrieved. He says that there is no justification for this disparity between his sentence and the sentences received by his Co-Accused. While I appreciate his concern, the fact is that the sentences passed upon his Co-Accused were extremely lenient, notwithstanding the fact that one of the Co-Accused was of previous good character. In his case, the magistrate might have been justified in suspending the sentence. The fact that his co-Accused might have been dealt with leniently does not make the sentence passed upon this Appellant wrong

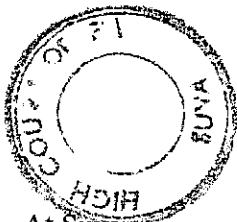
The correct approach is to decide what is the appropriate level of sentence for this Appellant on the facts of the case and bearing in mind all the other circumstances relating to his case. A starting point for sentence for this type of offence would be between two and three years.

The appellant was not entitled to a full discount for a guilty plea tendered at the first opportunity and he cannot make any claim to a good character.

In addition, the appellant was extremely fortunate that the Magistrate ^{passed} ~~past~~ concurrent sentences, both for the offence of resisting arrest and the offence of being in breach of bail. In respect of both matters it would have been perfectly correct in principle to pass consecutive sentences.

Accordingly, the sentence passed on the Appellant was entirely within the range appropriate for this type of offence; the fact that his Co-Accused received shorter and suspended sentences does not make the sentence passed on the appellant wrong.

I find that there is no merit in this appeal and it is dismissed.



At Suva

10th December, 2010.


Graham Cottle

JUDGE