

**IN THE HIGH COURT OF FIJI**

**AT SUVA**

**MISCELLANEOUS JURISDICTION**

**MISCELLANEOUS CASE NO. HAM 133 OF 2012S**

**VILIMONE DAUNABUNA**

**VS**

**STATE**

**Counsels** : **Applicant in Person**  
**Mr. L. Fotofili for State**

**Hearing** : **5<sup>th</sup> April, 2013**

**Ruling** : **31<sup>st</sup> May, 2013**

**Judgment** : **21<sup>st</sup> June, 2013**

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**JUDGMENT**

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1. On 18<sup>th</sup> April, 2012, the applicant (accused) appeared in the Suva Magistrate Court, on the following charge:

**FIRST COUNT**

**Statement of Offence**

**BURGLARY**: Contrary to Section 312 (1) of the Crimes Decree  
Number 44 of 2009.

**Particulars of Offence**

**VILIMONE DAUNABUNA**, on the 15<sup>th</sup> day of April, 2012, at Suva in the Central Division, broke and entered the **Rolle Associates Office** as a trespasser with intent to commit theft.

## **SECOND COUNT**

### **Statement of Offence**

**THEFT**: Contrary to Section 291 (1) of the Crimes Decree Number 44 of 2009.

### **Particulars of Offence**

**VILIMONE DAUNABUNA**, on the 15<sup>th</sup> day of April, 2012, at Suva, in the Central Division, dishonestly appropriated [stole] **1 x Toshiba Laptop with chord valued at \$400.00, 1 x Dell Laptop with chord valued at \$1,800.00, 1 x Cannon Digital Camera valued at \$100.00, 1 x Seiko Wrist Watch valued at \$700.00 and 1 x Apple ipod valued at \$600.00 all to the value of \$3,600.00** the property of **Rolle Associates**.

2. He was unrepresented. He waived his right to counsel. He elected to be tried in the Magistrate Court. He choose the English language. The charge was read and explained to him. He said, he understood the same. Out of his own free will, he pleaded guilty to the offences. The prosecution's summary of facts was presented on 19<sup>th</sup> April, 2012. It was read over and explained to him. He said, he understood them. He admitted the summary of facts. He was found guilty as charged and convicted accordingly by the court.
3. The facts briefly were as follows. The accused was drunk on 15<sup>th</sup> April, 2012. He broke into the complainant's office with intent to steal. The police were alerted. A police officer went to the crime scene. He saw the accused hiding in the office basement, carrying a bag, containing the stolen items mentioned in count no. 2. He was arrested accordingly, and later charged for the present offences.

4. On 20<sup>th</sup> April, 2012, the court sentenced the applicant to 1 ½ years imprisonment on each count of burglary and theft, made the same consecutive to each other ie. a total sentence of 3 years imprisonment, with a non-parole period of 2 years imprisonment. He was given 28 days to appeal, if he was dissatisfied with the above.
5. He appealed on 30<sup>th</sup> August, 2012. The accused's 28 days appeal period expired on 18<sup>th</sup> May, 2012. So, the accused's appeal was 3 months out of time. The accused had 56 previous convictions between 1997 to 2007, and he's been in and out of prison since then. Given his previous record, this is a person who well knew the criminal justice system, and therefore well knows the 28 days appeal period. If he wanted permission to appeal out of time, he well knew that, he must show "good cause" to the court, for permission to appeal out of time. Had he shown any "good cause"?
6. I have carefully looked at the applicant's complaints outlined in the letters he sent to the court. I have read the replies of the prosecution in their submission. I have carefully studied the court record, and the learned Resident Magistrate's Sentencing remarks on 20<sup>th</sup> April, 2012. The applicant submitted various grounds of complaints which were repetitive. They could be condensed into one ground, that is, the learned Resident Magistrate applied the wrong sentencing principle.
7. In my view, the learned Resident Magistrate followed the correct procedure and applied the relevant laws. Her sentencing remarks cannot be faulted. The applicant had **not** shown any "good cause", and that's why I dismissed his application to appeal out of time on 31<sup>st</sup> May, 2013. The above are my reasons. Application to appeal out of time dismissed accordingly.

**Salesi Temo**  
**JUDGE**

**Solicitor for the Accused** : **In Person.**  
**Solicitor for State** : **Office of the Director of Public Prosecution, Suva.**