

IN THE HIGH COURT OF FIJI

AT SUVA

APPELLATE JURISDICTION

CRIMINAL APPEAL CASE NO. HAA 025 OF 2014S

BETWEEN

SIKELI KANAIWAI

APPELLANT

AND

THE STATE

RESPONDENT

Counsels : Mr. J. Savou for Appellant
Mr. R. Kumar for Respondent
Hearing : 23 March, 2015
Judgment : 21 December, 2015

JUDGMENT

1. On 15 August 2014, the appellant waived his right to counsel, and pleaded guilty to the following charges, in Criminal Case No. 1356 and 1357 of 2014:

Statement of Offence

RESISTING ARREST: Contrary to Section 277(b) of the Crimes Decree No. 44 of 2009.

Particulars of Offence

SIKELI KANAIWAI, on the 14th day of August 2014, at Muslim League, Suva in the Central Division, resisted arrest by a police officer namely DC 3662 Peter in due execution of his duty.

COUNT ONE

Statement of Offence

BURGLARY: Contrary to Section 312(1) of the Crimes Decree No. 44 of 2009.

Particulars of Offence

SIKELI KANAIWAI on the 4th day of August, 2014 at Suva, in the Central Division, entered Lot 46 Jittu Estate the property of Vicky Prasad with intent to commit theft from therein.

COUNT TWO

Statement of Offence

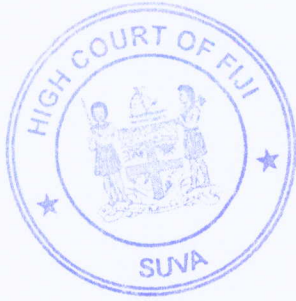
THEFT: Contrary to Section 291(1) of the Crimes Decree No. 44 of 2009.

Particulars of Offence

SIKELI KANAIWAI on the 4th day of August, 2014 at Lot 46 Jittu Estate, Raiwaqa at Suva in the Central Division stole 1 x Iris 406Q mobile phone valued at \$800.00 the property of Vicky Prasad with the intension of permanently depriving the said Vicky Prasad of his property.

2. The brief facts of both cases were simple. On 4 August 2014, the complainant was in his house at Jittu Estate charging his mobile phone, worth \$800. You forced your way into his house as a trespasser with intent to commit theft, saw the mobile phone, and stole the same. You later fled from the complainant's house. Ten days later, the police raided your house in Nabua, and put you in a police vehicle. They would take you later to the police station. You then resisted arrest by trying to escape from the police vehicle.
3. On 15 August 2014, you appeared in the Suva Magistrate Court charged with the offences mentioned in paragraph 1 hereof. The charges were read and explained to you. You were given your right to counsel. However, you waived the same, and pleaded guilty to all the three counts. You admitted the prosecution's summary of facts briefly mentioned in paragraphs 2 hereof. You were then convicted as charged on all three counts.
4. You gave a verbal plea in mitigation. Your previous convictions was provided by prosecution on 19 August 2014. You had 12 previous convictions in the last 10 years. Six were "burglary" convictions; five for "theft" and one for larceny in a dwelling house. You further made a plea in mitigation. You were sentenced on 20 August, 2014. For "burglary", you were given 3 years imprisonment. For "theft", you were sentenced to 1 ½ years imprisonment. For "resisting arrest", you were sentenced to 6 months imprisonment. All the above sentences were made concurrent to each other, making a final sentence of 3 years imprisonment.

5. You were dissatisfied with the above decisions. You filed an amended petition of appeal on 10 February 2015. I have carefully looked at your petition of appeal and the court record in processing your appeal.
6. However, the resolution to your appeal does not rest on your appeal grounds. In Criminal Case No. 1357 of 2014, you were charged with burglary and theft. Burglary (Count No. 1) is an indictable offence, which is triable summarily. Pursuant to Section 4(1)(b) of the Criminal Procedure Decree 2009, the Learned Magistrate should have put the election of a Magistrate Court or High Court trial to you, before the charges were explained to you and before the plea and convictions were entered. Having failed to do so, he had no jurisdiction to try you. His convictions and sentences were null and void: Aca Koroï v State, 2013, HAM 186/2012S.
7. As for Criminal Case No. 1356 of 2014, the Learned Magistrate had properly convicted you. You were sentenced to 6 months imprisonment. I take away the four months aggravating factors added to your sentence for your previous conviction. Balance is 2 months imprisonment. You have served your sentence.
8. As for Criminal Case No. 1357 of 2014, you have already spent 1 year 4 months 6 days in custody, since 15 August 2014, when you first appeared in court. In a sense, you had already served your time, despite the Learned Magistrate's conviction and sentences been null and void. I will therefore not order a re-trial.
9. However, I've taken note of your previous convictions. You have 7 previous convictions for "burglary" which is a form of "house breaking". Theoretically, given the above, you are a "habitual offender" pursuant to Section 10, 11, 12 and 13 of the Sentencing and Penalties Decree 2009. If you commit another burglary, the Resident Magistrate, who convicts you, can send you to the High Court to be sentence as a "habitual offender", in the form of a 10 years prison sentence and up. You are being warned.
10. Given the above, the accused's appeal succeeds, and he is to be released from prison forthwith.



Salesi Temo
JUDGE

Solicitor for Appellant : Legal Aid Commission, Suva.
Solicitor for Respondent : Office of the Director of Public Prosecution, Suva.