

IN THE HIGH COURT OF FIJI
AT LAUTOKA
CRIMINAL JURISDICTION

CRIMINAL CASE NO. HAC 138 OF 2012

STATE

VS

TAITO SENINAWANAWA

Ms. J. Fatiaki for the State
Mr. E. Koroï for the Accused

Date of Hearing: 21 & 22 April 2015

Date of Sentence: 22 April 2015

SENTENCE

[1] The accused faced the following two counts before this Court.

FIRST COUNT

Statement of Offence

AGGRAVATED BURGLARY: Contrary to section 313 (1) (a) of the Crimes Decree No. 44 of 2009.

Particulars of Offence

TAITO SENINAWANAWA in the company of others, on the 25th day of September 2012 at the Trans International Hotel in Nadi in the Western Division, entered into the room of **ROSIE KERR** as trespassers, with intent to commit theft therein.

SECOND COUNT

Statement of Offence

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

TAITO SENINAWANAWA with others on the 25th day of September 2012 at Nadi in the Western Division stole three Acer laptops valued at \$1,500.00, a wallet valued at \$60.00, an external battery valued at \$180.00, a mini DVD Player valued at \$140.00, an alarm clock valued at \$24.00 and cash of \$200.00, all to the total value of \$2104.00, the properties of **ROSIE KERR**.

- [2] To these counts he entered a plea of guilty on the 21st April and on 22nd April agreed a set of relevant facts. On his plea and on agreement of the facts he was convicted of both counts.
- [3] The facts of the case agreed by the convict are that on the 25th September 2012, he along with 2 others broke and entered into a room at a hotel near the Nadi Airport. The room was occupied by an American woman and her family who were visiting Fiji on a church mission. The family had left the room for dinner and on returning at about 8.00 pm noticed that the back door of the room was open and damaged. The following items were missing from the room.
- a) A blue computer notebook worth \$500
 - b) A black computer notebook worth \$500
 - c) A red computer notebook worth \$500
 - d) A brown wallet containing \$200 cash
 - e) An external battery valued at \$180
 - f) A mini DVD player valued at \$140
 - g) An alarm clock valued at \$24 (currency being FJD)
- [4] The Police were informed and the accused arrested on information. The accused voluntarily told the Police when interviewed that three of them met that evening with the intention to steal. They watched the hotel room lights from outside and once seeing a room light extinguished they cut open the fence and forced the room door open with a screw driver. They entered the room and took the items.
- [5] On leaving the room they went to a nearby field and shared the items amongst themselves. The accused was given two (2) computer notebooks which he gave to a relative who in turn handed them over to the Police.

- [6] In mitigation, counsel for the accused submits that the accused is 36 years of age, is married with three (3) children all schooling. He is a farmer in Sabeto, Nadi and the sole bread winner for his family. He also cares for his aged parents who are sickly and need his support. His agreement to commit the crimes was under pressure to obtain money for his family. He has many previous convictions of which eight (8) are current. Four of those are for escaping lawful custody and four are for larceny of cattle, a similar offence. He wishes to inform the Court and the victim family of his remorse. Counsel stresses the plea of guilty in mitigation as well as his remorse and the fact that the items given to him were recovered.
- [7] The accused has spent a total time of seventeen (17) months in custody awaiting trial on this matter.
- [8] The maximum penalty for aggravated burglary is a term of imprisonment for seventeen (17) years. The aggravation in this case is that the accused committed the burglary in the company of two other persons. The accepted tariff for aggravated burglary is a sentence of between 18 months and three years, with three years being the standard sentence for burglary of domestic premises.
- [9] The tariff for theft is three (3) to nine (9) months or 9 months and more if there has been a previous conviction for theft. Thefts of large amounts or in a sophisticated planned operation can attract sentences of up to three years.
- [10] There are several aggravating features in this case apart from the burglary being by a group. Invasion of a tourist's room and theft from that room is condemnable in the highest degree. Tourism is a major party in the economic wellbeing of this country and any actions taken by criminals that would destroy that income by deterring tourists are totally unacceptable. And to invade a tourist room at night when they would least expect their possessions to be in danger is yet an additional aggravating feature.
- [11] I take a starting point of twenty-four (24) months midway through the tariff and for the deplorable aggravating features involving tourists I add a further eighteen (18) months to that sentence, bringing it to an interim total of forty-two (42) months.
- [12] His stated need to have money for his family is not a mitigatory factor that the Court can give recognition to. He is a farmer and through farming the accused can feed his family and sell produce to provide legitimately for the family's use.

The limited mitigation of family circumstances is vitiated by his poor criminal record of previous larcenies. He will however have credit for his plea of guilty at a very late stage (first day of trial) and for his time already spent in remand.

[13] For the late plea of guilty I deduct seven (7) months from the forty-two (42) month total. The accused having spent seventeen (17) months in custody for this matter, the final sentence he is to serve is one of eighteen (18) months imprisonment.

[14] For the pre-planned theft of a tourist's electronic products, I sentence the accused also to eighteen (18) months imprisonment to be served concurrently with the burglary sentence.



Paul K. Madigan
Judge

AT LAUTOKA
22nd April 2015