

IN THE HIGH COURT OF FIJI AT SUVA

CASE NO: HAC. 254 of 2016

[CRIMINAL JURISDICTION]

STATE

V

SHAVNEEL PRASAD

Counsel : Ms. S. Navia and Ms. W. Elo for State
Mr. J. Uludole for Accused

Hearing on : 25th September – 05th October 2017

Summing up on : 06th October 2017

Judgment on : 09th October 2017

Sentence on : 12th October 2017

SENTENCE

1. Shavneel Prasad, after trial you are convicted of one count of burglary and one count of theft contrary to section 312(1)(a) and section 291(1) of the Crimes Act 2009 (“Crimes Act”) respectively.
2. The evidence revealed that, on 09/07/16, you entered the office of Shivani Nandani Priyanka Fiji Limited (“SNP Fiji Limited”) as a trespasser with intent to commit theft and you stole \$8946.90 cash and a CCTV camera decoder from that office. At the time you committed the offences you were employed as a driver of the said company. Prior to 09/07/16 you stole the bunch office keys that were kept inside the managing director’s vehicle which you drove and you used the said keys to gain access to the aforementioned office after office hours in order to commit the above offences.

3. The maximum penalty for the offence of burglary contrary to section 312(1) of the Crimes Act is 13 years imprisonment. I found three different tariffs in relation to the offence of burglary. In *State v Tabeusi* [2010] FJHC 426; HAC095-113.2010L (16 September 2010) it was noted that the tariff for this offence after trial is 2 to 3 years imprisonment. In the case of *State v Mucunabitu* [2010] FJHC 151; HAC017.2010 (15 April 2010) it was noted that the tariff is 18 months to 3 years imprisonment. In the case of *Vuli v State* [2017] FJHC 17; HAA53.2016 (23 January 2017) an imprisonment term between 1 to 3 years was suggested as the tariff for the offence of burglary.
4. The offence of theft contrary to section 219 of the Crimes Decree carries a maximum sentence of 10 years. In the case of *Waqa v State* [HAA 17 of 2015], this court held that the tariff for the offence of theft should be 4 months to 3 years imprisonment.
5. The two offences you have committed are founded on the same facts. Therefore, in view of the provisions of section 17 of the Sentencing and Penalties Act 2009 ("Sentencing and Penalties Act"), I consider it appropriate to impose an aggregate sentence of imprisonment for the two counts.
6. Section 17 of the Sentencing and Penalties Act, reads thus;

"If an offender is convicted of more than one offence founded on the same facts, or which form a series of offences of the same or a similar character, the court may impose an aggregate sentence of imprisonment in respect of those offences that does not exceed the total effective period of imprisonment that could be imposed if the court had imposed a separate term of imprisonment for each of them."
7. I would select 18 months as the starting point of your aggregate sentence.
8. I consider the following as aggravating factors;
 - a) The offences were carried out with premeditation; and
 - b) You stole from your employer. There is a breach of trust.

9. Considering the above aggravating factors and the value of the property stolen as proven in court which is more than \$8946.90, I increase your sentence by 3 years. Now your sentence is 4 years and 6 months.
10. Your counsel made submissions on your personal circumstances and the hardships your family members including your daughter may have to endure in the event you are given a custodial sentence. Your counsel also tendered a document purportedly written by your mother reiterating the same submissions made by your counsel. Your personal circumstances do not mitigate your offending.
11. Your counsel also submitted that you are a first offender. The prosecution did not challenge this. Your counsel submits that you are remorseful and you regret what you have done. The evidence revealed that you cooperated with the police to a certain extent. Considering these factors I will deduct 1 year and 6 months of your sentence. Your final sentence is 3 years imprisonment.
12. Your counsel requests this court to impose a non-custodial sentence considering your personal circumstances. The property offences such as theft, burglary and robbery are prevalent in this country. As a result, many people have opted to cage themselves inside burglar bars. Needless to say that the above offences also have a negative impact on the commercial activities in the country. Therefore, leniency with regard to the offences you have committed will send a wrong message to the society and it will make the protection of the community more difficult.
13. I am inclined to hold the view that the established tariff(s) for the offence of burglary is itself lenient. Where the lawmakers have decided to set the maximum penalty as an imprisonment term of 13 years for the offence of burglary, the upper limit of the established tariff(s) is just 3 years which is less than one-fourth of the said maximum penalty.

14. The maximum penalty provided in the Crimes Act and the established sentencing tariffs for the aforementioned property offences are as follows;

Offence	Maximum Penalty	Tariff
Theft (summary offence)	10 years	4 months to 3 years <i>Waqqa v State</i> [2015] FJHC 729
Burglary (indictable/summary offence)	13 years	12/18/24 months to 3 years <i>State v Tabeusi</i> [2010] FJHC 426; <i>State v Mucunabitu</i> [2010] FJHC 151; <i>Vuli v State</i> [2017] FJHC 17
Robbery (indictable/summary offence)	15 years	2 years to 7 years <i>Rarawa v State</i> [2015] FJHC 324
Aggravated Burglary (indictable offence)	17 years	18 months/2 years to 3 years <i>State v Seninawanawa</i> [2015] FJHC 261; <i>State v Korodrau</i> [2014] FJHC 514
Aggravated Robbery (indictable offence)	20 years	8 years to 16 years <i>Wise v State</i> [2015] FJSC 7

15. Considering the above table, and especially in view of the tariff set by the Supreme Court for the offence of Aggravated Robbery, it is manifestly clear that the tariff for the offences of burglary and aggravated burglary are rather lenient.
16. In view of the tariff of 2 years to 7 years for the offence of robbery which carries a maximum penalty of 15 years, in my view the tariff for burglary which carries a maximum penalty of 13 years should be an imprisonment term within the range of 20 months to 6 years. Further, based on the tariff established by the Supreme Court for the offence of aggravated robbery, the tariff for the offence of aggravated burglary which carries a maximum sentence of 17 years should be an imprisonment term within the range of 6 years to 14 years.
17. Considering all circumstances, the nature and the circumstances of your offending, I am of the view that it is not appropriate to suspend your sentence.

18. Accordingly I impose on you an aggregate sentence of imprisonment of 3 years. I order that you are not eligible to be released on parole until you serve 2 years of the sentence pursuant to the provisions of section 18 of the Sentencing and Penalties Act.
19. Section 24 of the Sentencing and the Penalties Act reads thus;
“If an offender is sentenced to a term of imprisonment, any period of time during which the offender was held in custody prior to the trial of the matter or matters shall, unless a court otherwise orders, be regarded by the court as a period of imprisonment already served by the offender.”
20. I note that you have spent around 57 days in custody in relation to this case. The period you were in custody shall be regarded as a period of imprisonment already served by you in view of the provisions of section 24 of the Sentencing and Penalties Act. I hold that the period that should be regarded as served is two months.
21. In the result, you are sentenced to 03 years imprisonment with a non-parole period of 02 years. Considering the time spent in custody, the time remaining to be served is as follows;
Head Sentence - 02 years and 10 months
Non-parole period - 01 year and 10 months
22. 30 days to appeal to the Court of Appeal.



Vinsent S. Perera
JUDGE

Solicitors for the State : Office of the Director of Public Prosecutions, Suva.
Solicitor for the Accused : Colavanua Law, Suva.