

IN THE HIGH COURT OF FIJI AT SUVA

CASE NO: HAC. 316 of 2018

[CRIMINAL JURISDICTION]

STATE

V

1. S. C. (Juvenile)
2. APISALOME BECIWEKANA

Counsel : Ms. S. Tivao for the State
Ms. L. Ratidara for the 1st Accused
Mr. A. Chand for the 2nd Accused

Hearing on : 12 November 2018

Sentenced on : 04 December 2018

SENTENCE

1. Apisalome Beciwekana, you have pleaded guilty to the charges produced below and were convicted as charged accordingly;

COUNT 1

Statement of Offence

Aggravated Burglary: contrary to section 313 (1)(a) of the Crimes Act of 2009.

Particulars of Offence

S. C. and APISALOME BECIWEKANA on the 3rd August, 2018 at Cunningham in the Central Division, entered into the premises of Abdul Munaf as trespassers with intent to commit theft of Abdul Munaf's property.

COUNT 2

Statement of Offence

Theft: contrary to section 291 of the Crimes Act of 2009.

Particulars of Offence

S. C. and APISALOME BECIWEKANA on the 3rd August 2018 at Cunningham in the Central Division, in the company of each other stole 1 x Panasonic 32" TV valued at \$1999.00 the property of Abdul Munaf with the intention to deprive Abdul Munaf of the above properties.

2. You have admitted the following summary of facts;

Background

The Complainants are:

- *The Complainant is one Abdul Munaf, 52 year old hair dresser of Stage 4 Cunningham, Suva.*
- *Offender 1 is one S. C., 17 year old unemployed of Stage 4 Cunningham Road, Vunidakua Settlement, Suva.*
- *Accused 2 is one Apisalome Beciwekana, 19 year old, unemployed of Stage 4 Cunningham, Suva.*

Incident:

1. *On the 3rd of August 2018 at around 17pm Offender 1 and Accused 2 planned to break into the complainant's house with intention to steal.*
2. *Offender 1 and Accused 2 entered into the compound of the complainant and noticed the windows at the back of the house open. Offender 1 then placed his right hand in the open window and opened the lock of the back door from the inside.*
3. *Offender 1 and Accused 2 entered into the complainant's house. Accused 2 went straight to the 32" Panasonic flat screen TV, removed the same, and went outside carrying the TV.*
4. *Offender 1 had removed the deck and placed it in one of the two bags he had taken from the complainant's property.*
5. *When Offender 1 was exiting the house with the complainants 2 bags, he noticed the complainant, he immediately left the bags and ran to the road.*

6. At around 17.20pm on the 3rd August 2018 the complainant returned to his home with his two children at Stage 4 Cunningham and noticed his 32" Panasonic flat screen TV worth \$1999.00 missing. The matter was reported to police at the Nabua Police Station.
7. On 3rd August 2018, Offender 1 and Accused 2 had entered into the property of the complainant with intent to steal. Further Offender 1 and Accused 2 had dishonestly appropriated the 32" Panasonic flat screen TV worth \$1999.00.

Investigation and Caution Interview:

8. Following an investigation DC 4967 Tevita Finau arrested Accused 2 who voluntarily admitted to committing the crime. Accused 2 then took DC 4967 Tevita Finau and his team to where he kept the stolen 32" Panasonic flat screen TV on the 4th August 2018.
 9. DC 4967 Tevita Finau then seized the 32" Panasonic flat screen TV, and handed the item over to be exhibited with the station orderly.
 10. On the 6th August 2018 the exhibited 32" Panasonic flat screen TV was shown to the complainant who identified the same as his own.
 11. On the 4 August 2018 Offender 1 was interviewed under caution in the English language by DC 3518 Savenaia at the Nabua Police Station where he voluntarily admitted to the allegation that he and Accused 2 had planned to break into the complainant's property and it was his plan. After they entered into the complainant's property and where he started packing items into two bags. When he noticed the complainant return home Offender 1 left the 2 bags and fled the scene.
 - A copy of the Offender 1 RPI is attached as Annexure 1
 12. On the 4 August 2018 Accused 2 was interviewed under caution in the English language by D/Cpl 2524 Iliesa at the Raiwaqa Police station where he voluntarily admitted to the allegation that he and Offender 1 entered into the complainant's property, and he had taken the complainant's TV with the intention to sell the same.
 - A copy of the Accused 2 ROI is attached as Annexure 2
 13. Full recoveries were made.
3. The maximum penalty for the offence of aggravated burglary contrary to section 313 of the Crimes Act is an imprisonment term of 17 years. As I have explained in *State v Prasad* [2017] FJHC 761; HAC254.2016 (12 October 2017) and *State v Naulu* [2018] FJHC 548 (25 June 2018), based on the tariff endorsed by the Supreme Court for the offence of aggravated robbery in the case of *Wise v State* [2015] FJSC 7, the tariff for the offence of aggravated burglary should be an imprisonment term within the range of 6 years to 14 years.

4. The offence of theft contrary to section 291 of the Crimes Act 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 written submission filed on behalf of the prosecution includes a submission regarding the tariff for the offence of aggravated burglary which appears to be reproduced in every sentencing submission recently filed in cases involving the offence of aggravated burglary. I have dealt with the relevant and important issues raised in the said submission in the case of *State v. Kitione and another* [HAC 375/2018; (04 December 2018)].
6. The offences you are convicted of are founded on the same facts. Therefore, in view of the provisions of section 17 of the Sentencing and Penalties Act, I consider it appropriate to impose an aggregate sentence of imprisonment against you for the two offences you have committed.
7. Section 17 of the Sentencing and Penalties Act 2009 ("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."
8. According to the summary of facts, there was preplanning between you and the co-accused. I would consider this as an aggravating factor.

9. You are 19 years old. In your mitigation, apart from the fact that you have entered an early guilty plea you have submitted that;
- a) You are a first offender;
 - b) You are remorseful;
 - c) The stolen item was recovered; and
 - d) You have cooperated with the police.
10. I would select 06 years as the starting point of your aggregate sentence. Given the aforementioned aggravating factor I would add 01 year to your sentence. I would deduct 03 years in view of the above mitigating factors. Now your sentence is an imprisonment term of 04 years. In view of your early guilty plea through which you have saved this court's time and resources, you will be given a discount of one-third. Accordingly, your final aggregate sentence is an imprisonment term of 02 years and 08 months. The non-parole period I would fix in view of the provisions of section 18 of the Sentencing and Penalties Act would be 02 years.
11. I consider it appropriate to partially suspend your sentence in terms of section 26(1) of the Sentencing and Penalties Act given that you are a young first offender. I order that you serve the first 04 months of your sentence forthwith and the remaining period of 02 years and 04 months is suspended for 5 years.
12. It is submitted that you have been in custody in view of this matter since 03/08/18. You have accordingly spent a period of 04 months in custody. The time you have spent in custody shall be regarded as a period of imprisonment already served by you in terms of section 24 of the Sentencing and Penalties Act. Given the period you have spent in custody, the time you should serve before your sentence is suspended is regarded as served. Therefore, you shall be released forthwith.

13. Accordingly, you are sentenced to an imprisonment term of 02 years and 08 months with a non-parole period of 02 years. You should serve 04 months of your sentence forthwith and the remaining period of 02 years and 04 months is suspended for 5 years. Given the period you have spent in custody, the time you should serve before your sentence is suspended is regarded as served.
14. Thirty (30) days to appeal to the Court of Appeal.



A handwritten signature in blue ink, appearing to read "Vinsent S. Perera".

Vinsent S. Perera
JUDGE

Solicitors;

Office of the Director of Public Prosecutions for the State.
Legal Aid Commission for the Accused.