



*Particulars of the Offence*

*JAYDEN SINGH on 19<sup>th</sup> day of January, 2018 at Suva in the Central Division, entered into the property of SALENDRA KUMAR as a trespasser with intent to commit theft.*

**COUNT 2**

*Statement of offence*

**THEFT:** *Contrary to Section 291 (1) of the Crimes Act 2009.*

*Particulars of the Offence*

*JAYDEN SINGH on 19<sup>th</sup> day of January, 2018 at Suva in the Central Division, dishonestly appropriated 1 x wrist watch citizen brand, 1 x Samsung mobile phone, 1 x Samsung laptop, 2 x hard drives, 1 x mobile charger, 3 x bottles of perfume, 1 x USB, 1 x laptop bag, \$500.00 cash, the property of SALENDRA KUMAR with the intention to permanently deprive SALENDRA KUMAR of the said property.*

2. You pleaded guilty for these two counts on the 15th of October 2018. Satisfied by the fact that you have fully comprehended the legal effect of your plea and your plea was voluntary and free from influence, I now convict you for each of these two counts.
3. According to the summary of fact, which you admitted in open court, that you have entered into the house of the complainant in the night of 19th of January 2018, by removing louvre blades and then stolen the properties as described in the particulars of the offence.
4. The offence of burglary is a serious offence. This is a case where you have entered into the house of the complainant in the night, when the occupants in the house were sleeping. Burglars invade into the space of others freedom in order to steal from them. Hence, the offence of burglary is one of the dangerous forms of property crime as offender can create the fear and insecurity among the people. Thus the purpose of this sentence is founded on the principle of deterrence and protection of the community. I am mindful of the principle

of rehabilitation, however, it is my opinion that the need of deterrence outweighs the principle of rehabilitation.

5. These two offences are founded on the same series of offending of same and similar characters. Therefore, I find it is appropriate to impose an aggregate sentence pursuant to Section 17 of the Sentencing and Penalties Act.
6. Justice Madigan in Waqavanua v State [2011] FJHC 247; HAA013.2011 (6 May 2011) held that the acceptable tariff limit for **Burglary** under the Crimes Decree should be between one (1) year to three (3) years.

*“The maximum penalty for burglary is thirteen years imprisonment and not life as the Magistrate stated and the accepted tariff band for the offence set down under the old Penal Code is between 18 months to three years imprisonment (Tomasi Turuturuvesi – HAA 06/02S). Given that life imprisonment was the maximum penalty under the Penal Code, and the maximum is now thirteen years, then a proper tariff band for the offence of burglary under the Crimes Decree should be between twelve months to three years.”*

7. However, Justice Madigan in Gonerogo v State - [2013] FJHC 163; HAA22.2012 (5 April 2013) has outlined another tariff limit for burglary, where his Lordship held that:

*“The maximum penalty for burglary is now 13 years imprisonment. Under the Penal Code it was life imprisonment and the accepted tariff then pertaining was two to three years imprisonment. If that was the tariff when the maximum was life imprisonment, the tariff should now be somewhat less perhaps 18 months to 36 months.”*

8. Justice De Silva in Samuela Ramagimagi [2014] FJHC 116; HAA28.2013 (5 March 2014) has selected two years as the starting point for the offence of **Burglary** under the Crimes Decree.

9. In Uluicicia v State [2015] FJHC 61; HAA028.2014 (30 January 2015), Justice Madigan found that the acceptable tariff for domestic **Burglary** is between one year and two years with the usual sentence being fifteen months, where his Lordship held that:

*“The tariff for domestic burglary is now between one year and two years with the usual sentence being 15 months. (see Tabeusi [2010]FJHC 426). If the burglary is in breach of trust, such as invading the premises of an employer then a higher sentence could be justified (see Gonerogo HAA 22 of 2012).”*

10. Justice Aluthge in Talakubu v State [2016] FJHC 1121; HAA37.2016 (13 December 2016) has found the acceptable tariff limit for **Burglary** as between eighteen months and three years, where his Lordship held that:

*“Under the Crimes Decree, the maximum sentence for Burglary is imprisonment of 13 years. In State v. Taito Seninawanawa HAC 138 Of 2012 (22 April 2015) Madigan J set out the tariff for Burglary between 18 months and 3 years with three years being the standard sentence for burglary of domestic premises.”*

11. Justice Madigan in Ratusili v State [2012] FJHC 1249; HAA011.2012 (1 August 2012) has discussed the acceptable tariff for theft, where his Lordship held that:

1. *For a first offence of simple theft the sentencing range should be between 2 and 9 months.*
2. *Any subsequent offence should attract a penalty of at least 9 months.*
3. *Theft of large sums of money and thefts in breach of trust, whether first*

*offence or not can attract sentences of up to three years.*

4. *Regard should be had to the nature of the relationship between offender and victim.*
5. *Planned thefts will attract greater sentences than opportunistic thefts.*
12. The summary of facts does not reveal any aggravating circumstance of this offending.
13. You are a first offender and 19 years old. Hence, I give you a substantial discount for your previous good character.
14. You pleaded guilty for these offences at the first available opportunity. You have admitted in your caution interview that you have committed these offences, and maintained the same position by pleading guilty at the first available opportunity, which demonstrate your remorse and repent in committing these crimes. Hence, I give you one-third discount for your early plea of guilty and remorse.
15. Having taken into consideration the above discussed factors, I sentence you to aggregate sentence of eighteen months (18) imprisonment for these two counts as charged.
16. In view of the seriousness of this offence, I do not find any appropriate reasons to suspend your sentence.
17. Having considered your age, family circumstances and opportunities for rehabilitation, I do not fix a non-parole period for your sentence.

#### **Head Sentence**

18. Accordingly, I sentence you for a period of **eighteen months (18)** imprisonment for these offences as charged.

#### **Actual Period of Sentence of Mr. Jayden Singh**

19. You have been in remand custody for this case for a period of nearly twenty five (25) days as you were not granted bail by the Court. In pursuant of Section 24 of the Sentencing and Penalties Act, I consider the period of one (1) month as the period of imprisonment that have already been served by you.
20. Accordingly, your actual sentencing period is **seventeen (17) months** of imprisonment period.
21. Thirty (30) days to appeal to the Fiji Court of Appeal.



  
R.D.R.T. Rajasinghe  
**Judge**

At Suva  
14<sup>th</sup> December 2018

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