

IN THE HIGH COURT OF FIJI AT SUVA

CASE NO: HAC. 042 of 2018

[CRIMINAL JURISDICTION]

STATE

V

DL

Counsel : Ms. U. Tamanikaiyaroi for State
Ms. L. David for Juvenile

Date of Order : 18 May 2018

(The juvenile's name is suppressed)

ORDER

1. DL, you were found guilty of the following offences on your plea of guilty;

FIRST COUNT

Statement of Offence

AGGRAVATED BURGLARY: contrary to section 313 (1) (a) of the Crimes Act 2009.

Particulars of Offence

DL with another on the 11th day of January, 2018 at Lami, Suva in the Central Division entered into the property of **SIMON ZOING** as a trespasser with intent to commit theft.

SECOND COUNT

Statement of Offence

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

Particulars of Offence

DL with another on the 11th day of January, 2018 at Lami, Suva in the

Central Division dishonestly appropriated 8 x perfume bottles valued at \$100.00, assorted jewellery valued at \$2,000.00 and 1 x Spear gun valued at \$150.00, all to the total value of \$2,250.00, the property of SIMON ZOING with the intention to permanently deprive SIMON ZOING of the said property.

2. The summary of facts are as follows;

The Juvenile

1. *DL 17 years of age, unemployed of Kalekana, Lami.*

The Complainant

2. *SIMON ZOING 57 years of age, National Sales Marketing of Lot 5 Panatomic Road, Lami.*
3. *The complainant namely Simon Zoing (hereby referred to as "PW1") was away in New Zealand with his wife and had left his caretaker namely Mesulame Rakuro (hereby referred to as "PW2") to look after his property until he returned.*
4. *On 11th January 2018 at around 5.39pm, PW2 was at PW1's residence to feed the dogs. As he walked around the house to check on the compound he noticed a handbag that belonged to one of the occupants of the house belonging to the wife of PW1.*
5. *PW2 also noticed that some louvre blades were lying and one of the bedroom windows had been removed. PW2 approached the bedroom window and noticed that everything was scattered inside the room, PW2 then went to the neighbour's house and the matter was reported to police.*
6. *On Monday 15th January 2018, PW1 returned to Fiji and upon inspection of his residence noted that the following items had been stolen 8 x perfume bottles (French perfume) valued at \$100.00, assorted jewellery valued at \$2,000.00, 1 x spear gun valued at \$150.00, all to the total value of \$2,950.*
7. *The Juvenile was arrested and interviewed under caution in the i-taukei language at the Lami Police Station on 16th January 2018 by DC 4281 Joji Dakuwaqa in the presence of his father namely Jiuta Rajumaki.*

❖ *[A copy of the Record of Interview in the I-taukei language and English translation of the Juvenile is attached as A1]*

8. *The juvenile admissions in Q&A 12-13 that he woke up after midnight and went to Panoramic road with another to steal, Q&A 20-21 he admitted to entering PW1's residence through a window, Q&A 24 & 28 he mentioned the assorted items that he stole from PW1's residence.*
9. *On 17th January 2018, the Juvenile was formally charged by WDC 3767 Martina (hereby referred to as "PW3").*
3. As I have explained in the case of *State v Prasad* [2017] FJHC 761; HAC254.2016 (12 October 2017), 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 which carries a maximum penalty of 17 years imprisonment 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. In terms of the provisions of section 30(3) of the Juveniles Act a young person shall not be ordered to be imprisoned for more than 2 years.
6. 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."
7. The two 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 for the two offences.

8. The value of the property stolen which is \$2,950 as agreed by you and the damage to the complainant's property will be regarded as factors that would aggravate your offending.
9. You are 17 years old and will be turning 18 in October this year. According to the Social Welfare Report, you did not complete your high school education due to financial reasons and lack of family support and you were enrolled as a first year student in a vocational school at the beginning of this year. In the said report the welfare officer had submitted that you have been in good behaviour during the period you were kept at the Boys Centre. The officer says that you are remorseful and you intend to complete your education.
10. Your counsel had submitted that you are a first offender and you were persuaded by the other accused to commit this offence. It is submitted that now you deeply regret your actions and you are willing to reform.
11. You have taken responsibility to your actions and had saved the court's time by pleading guilty at the earliest opportunity. You have cooperated with the police.
12. Having considered all the facts before this court including the fact that you have committed the second most serious offence against property under Part 16 of the Crimes Act, I would impose on you a term of 4 months imprisonment. Given the fact that the offences against property are prevalent in the country and the fact the number of young offenders brought before the courts for committing such offences appear to be increasing, it is necessary to impose a term of imprisonment in this case. Had I opted for any other sentencing option, it would have sent a wrong message to the society.
13. You have spent 19 days in custody in relation to this matter. The time you have spent in custody shall be regarded as a term already served in terms of section 24 of the sentencing and Penalties Act. I hold that the period to be regarded as

served shall be 1 month. Accordingly time remaining to be served by you is 3 months.

14. Whereas, I have decided to rely on the firm undertaking you have given to this court that you will pursue your studies and lead a good life, I would suspend your punishment for a period of 2 years in terms of the provisions of section 26(1) of the Sentencing and Penalties Act.
15. Given the fact that it is highlighted in your social welfare report that there was a lack of family support, it appears that your parents have failed to discharge their duties and responsibilities towards you in guiding you in the correct path. As a form of penalty in that regard and also a warning to all other parents I would order that your mother pay a fine of \$100 in terms of section 32(1)(c) of the Juveniles Act.
16. In the circumstances, an imprisonment for a term of 04 months is imposed on you and considering the time you have spent in custody the period remaining to be served is 03 months. The serving of the said 03 months is suspended for a period of 02 years. Your mother is fined \$100 and this fine should be paid to the High Court Criminal Registry on or before 18/07/18.



Vincent S. Perera

JUDGE

Solicitors:

**Office of the Director of Public Prosecutions for the State
Legal Aid Commission for the Juvenile**