

IN THE HIGH COURT OF FIJI
AT SUVA
CRIMINAL JURISDICTION

CRIMINAL CASE NO. HAC 154 of 2018
[Magistrates' Court Criminal Case No. 512 of 2018]

BETWEEN : **THE STATE**

AND : **APISAI TAKALAIBAU**

Counsel : **Mr E Samisoni for the State**
Accused in Person

Date of Hearing : **29 May 2018**

Date of Sentence : **15 June 2018**

SENTENCE

- [1] Apisai Takalaibau, you have freely and voluntarily pleaded guilty to aggravated burglary and theft at the first opportunity. You are convicted as charged.
- [2] The facts are that on 11 January 2018 you entered the home of the victim, Simon Zoing at Lot 5 Panaromic Road, Lami in the company of another person by removing the louver blades of one of the bedroom windows with the intention to steal. At the material time, the house was vacant as the owner was overseas. After entering, you ransacked the house and stole perfumes, assorted jewellerys and a spear gun, all to the total value of \$2950.00. The invasion was discovered when a caretaker visited the house the next day.
- [3] In your caution interview, you admitted the allegation and said that you were drunk when you committed the crime. The stolen properties were not recovered.

- [4] In mitigation you informed the Court that you are 34 years old and the sole breadwinner of your family. This is your first offence and you are remorseful.
- [5] A person who enters a building with one or more other persons as a trespasser, with the intention to steal commits an aggravated burglary punishable by 17 years' imprisonment under section 313(1)(a) of the Crimes Act. Theft is committed if a person dishonestly appropriates property belonging to another with the intention to permanently deprive. The maximum penalty for theft is 10 years imprisonment under section 291 of the Crimes Act.
- [6] Previously, under section 299(a) of the Penal Code, burglary was defined as entering and breaking into the dwelling house of another at night with the intention to commit a felony and punishable by life imprisonment. The Penal Code also provided for specific offences of 'larceny in dwelling house of property value amounting to not less than ten dollars' punishable by 14 years' imprisonment (s 270 (a)), and 'house-breaking and committing a felony' also punishable by 14 years' imprisonment (s 300(a)). The tariff for house-breaking entering and larceny was between 18 months to 3 years' imprisonment, the question of suspension being reserved for the young first offender (*Tomasi Turuturuvesi v State* Cr App No HAA 86/2002).
- [7] Theft for which no special punishment was provided under the Penal Code was categorized as simple larceny and a felony punishable with 5 years' imprisonment. A person who committed a simple larceny after having convicted of felony was liable to 10 years' imprisonment. The tariff ranged from 2 months to 3 years' imprisonment depending on the nature of theft (*State v Saukilagi* [2005] FJHC 13; HAC0021X.2004S (27 January 2005)).

- [8] The seriousness of the aggravated burglary and theft from a dwelling home must be now considered in light of the legislative changes made to these offences by the Crimes Act. Both burglary and theft are now defined broadly, incorporating dishonest appropriation of property from any building as a trespasser at any time of the day. There is no distinction made based on whether the building is used for dwelling or business or whether the offence is committed during the day or night. Burglary is elevated to aggravated burglary if the offence is committed in the company of another or with an offensive weapon. Aggravated burglary is categorized as an indictable offence while theft is categorized as a summary offence.
- [9] A factor that influences sentencing is the prevalence of the offence in the community. According to the 2017 court statistics, 186 cases of aggravated burglary were filed in the High Court throughout Fiji – 97 in Central, 82 in West and 7 in North. It was the highest figure in the offences list. So far from January 2018 to May 2018, 112 cases of aggravated burglary have been filed in the High Court – 68 in Central, 24 in West and 3 in North. The figure is the second highest in the list of offences. The more prevalent is an offence, the greater the need is for deterrence and protection of the community.
- [10] Burglary of home must be regarded a serious offence. A home is a private sanctuary for a person. People are entitled to feel safe and secure in their homes. Any form of criminal intrusion of privacy and security of people in their homes must be dealt with condign punishment to denounce the conduct and deter others. As Lord Bingham CJ in *Brewster* 1998 1 Cr App R 220 observed at 225:

“Domestic burglary is, and always has been, regarded as a very serious offence. It may involve considerable loss to the victim. Even when it does not, the victim may lose possessions of particular value to him or her. To those who are insured, the receipt of financial compensation does not replace what is lost. But many victims are uninsured; because they may have fewer possessions, they are the more seriously injured by the loss of those they do have. The loss of material possessions is, however, only part (and often a minor part) of the reason why domestic burglary is a serious offence. Most people, perfectly legitimately, attach importance to the privacy and security of their own homes. That an intruder should break in or enter, for his

own dishonest purposes, leaves the victim with a sense of violation and insecurity. Even where the victim is unaware, at the time, that the burglar is in the house, it can be a frightening experience to learn that a burglary has taken place; and it is all the more frightening if the victim confronts or hears the burglar. Generally speaking, it is more frightening if the victim is in the house when the burglary takes place, and if the intrusion takes place at night; but that does not mean that the offence is not serious if the victim returns to an empty house during the daytime to find that it has been burgled. The seriousness of the offence can vary almost infinitely from case to case. It may involve an impulsive act involving an object of little value (reaching through a window to take a bottle of milk, or stealing a can of petrol from an outhouse). At the other end of the spectrum it may involve a professional, planned organisation, directed at objects of high value. Or the offence may be deliberately directed at the elderly, the disabled or the sick; and it may involve repeated burglaries of the same premises. It may sometimes be accompanied by acts of wanton vandalism.”

- [11] In your case, many of the aggravating factors outlined in *Brewster's* case are not present. There was no significant damage done to the property except that the home was ransacked. The items removed were not of sentimental value. Intrusion occurred when the owner was not at home. No planning was involved.
- [12] The mitigating factors are your early guilty plea, expression of remorse and your previous good character. I do not consider your age and family circumstances as mitigating factors. I give you a discount of one third for your early guilty plea and expression of remorse and a further reduction in sentence for your previous good character.
- [13] Your remand period is about 2 ½ months. I make a downward adjustment to your sentence to reflect your remand period.
- [14] The two offences you committed are founded on the same facts. Section 17 of the Sentencing and Penalties Act permits imposition of an aggregate sentence for

offences founded on the same facts. After taking all these factors into consideration, I sentence you to an aggregate sentence of 2 years' imprisonment. There are no special circumstances to suspend the sentence. You have taken responsibility for your unlawful conduct. I think you have a good prospect to rehabilitate. I decline to fix a non-parole period.



A handwritten signature in blue ink, appearing to read "D. Goundar".

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Hon. Mr Justice Daniel Goundar

Solicitors:

Office of the Director of Public Prosecutions for the State
Accused in Person