

IN THE HIGH COURT OF FIJI AT SUVA

CASE NO: HAC. 136 of 2018

[CRIMINAL JURISDICTION]

STATE

V

1. METUI NAULU
2. SAMUELA SINUSETAKI

Counsel : Mr. E. Samisoni for State  
Accused in person

Hearing on : 28 May 2018

Sentence on : 25 June 2018

SENTENCE

1. Metui Naulu and Samuela Sinusetaki, each of you have pleaded guilty to the two offences produced below. After considering the summary of facts you have admitted and your cautioned interview statements, this court was satisfied that the pleas you have entered were unequivocal. You were accordingly convicted as charged for the following offences;

**FIRST COUNT**

*Statement of Offence*

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

*Particulars of Offence*

**METUI NAULU and SAMUELA SINUSETAKI** in the company of each other, on the 26<sup>th</sup> day of March 2018 at Suva in the Central Division, entered as trespassers into Sports World with intent to commit theft from that property.

**SECOND COUNT**

*Statement of Offence*

**Theft** : contrary to section 291(1) of the Crimes Act 2009.

*Particulars of Offence*

**METUI NAULU and SAMUELA SINUSETAKI** in the company of each other, on the 26<sup>th</sup> day of March 2018 at Suva in the Central Division, dishonestly appropriated (stole) 10 x Puma sports boots valued at \$971.00, 5 x Asics sports boots valued at \$1,035.00, 1 x Descendant shoes valued at \$129.00, 6 x Under Armour tights valued at \$534.00, 1 x Under Armour shorts valued at \$119.00, 2 x Under Armour t-shirts valued at \$178.00, 4 x Under Armour polo shirts valued at \$396.00 all to the total value of \$3,362.00 in the property of Sports World.

2. The summary of facts both of you have admitted are as follows;

*Accused:* (A1) Metui Naulu, 27 years old, currently unemployed of Makoi (formerly employed at Sports World, Waimanu Road – Suva);  
(A2) Samuela Sinusetaki, 19 years old, student of Raiwai.

*Complainant:* (PW1) Vinod Kumar, 46 years old, General Manager of Sports World, of Nabua.

*On 26 March 2018 at about 9pm, PW1 received information that the security alarm at the Sports World shop at Waimanu Road in Suva had been triggered. The Police were called shortly after. PW2 PC 5116 based at Totogo Police station was on duty attended to the scene together with other police officers. When they arrived at the scene*

*PW1 was waiting for them and unlocked the back door to the Sports World shop so that they could enter the same. Then PW2 and the other police officers entered the shop they discovered A1 and A2 hiding inside the shop smelling of liquor. The police officers found a bag filled with the stolen items beside A1 and A2. A1 and A2 intended to steal the following items:*

*10 x puma sports boots valued at \$971.00; 5 x Asics sports boots valued at \$1,035.00; 1 x Descendant shoes valued at \$129.00; 6 x under armour tights valued at \$534.00; 1 x under armour shorts valued at \$119.00; 2 x under armour t-shirts valued at \$178.00; 4 x under armour polo shirts valued at \$396.00; all to the total value of \$3,362.00 the property of Sports World.*

*All the above items were recovered at the scene of the crime.*

*A1 and A2 were arrested at the scene of the crime and taken to the Totogo Police station where they were charged with these offences.*

*A1 and A2 had gained entry into the Sports World shop through the roof.*

*A1 made full admissions in his Video Recorded interview at pages 6 to 9 of his English translated transcript where he admitted to breaking into Sports World with A2, by climbing onto the roof and entering through the said roof into the shop using a chisel. A1 also admitted to stealing the stolen items as listed.*

*A2 also made full admissions in his Video Recorded interview at pages 7,8 and 13 of his English translated transcript where he also admitted to entering Sports World with A1 by breaking through the roofing iron and stealing the said stolen items.*

*Copies of the said transcripts for both A1 and A2 are annexed.*

*On 7 May 2018 A1 and A2 waived their rights to counsel and pleaded guilty to both*

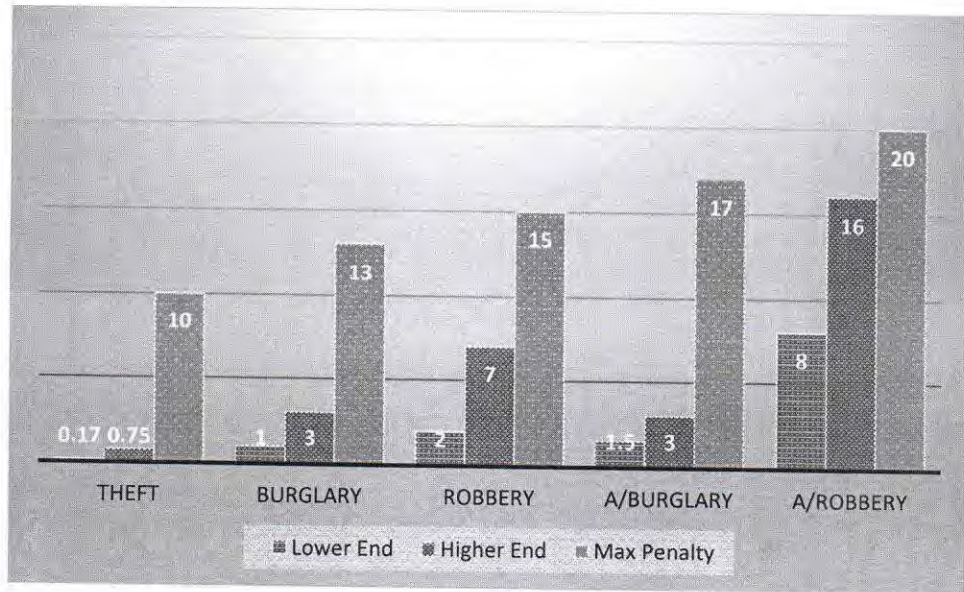
*counts as charged.*

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. The alarming disparity I noted between the tariff for aggravated robbery and the generally used tariff for aggravated burglary as clearly reflected in the chart below compelled me in the case of *State v Prasad* (supra) to deduce the aforementioned tariff for the offence of aggravated burglary from the tariff endorsed by the Supreme Court in *Waqa v State* (supra) for aggravated robbery. The chart shows the existing tariffs for the offence of theft, burglary, robbery, aggravated burglary and aggravated robbery that were considered in *State v Prasad* (supra). The first column indicates the lower end of the tariff, the second column indicates the higher end of the tariff and the third column, the maximum sentence for the offences imposed by the legislature. The figures noted at the top of each column indicates the number of years.
6. The chart reflects the following tariffs;

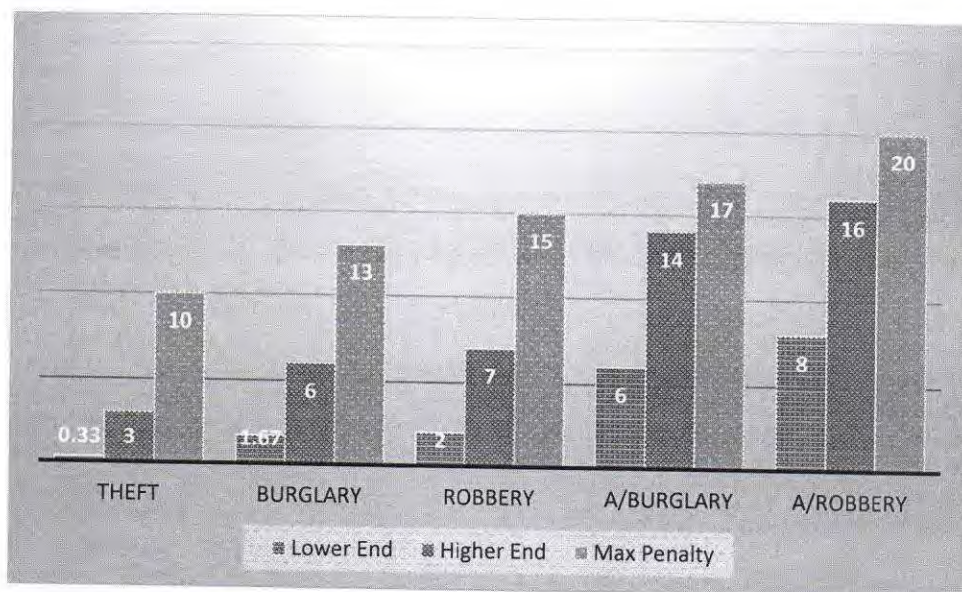
<b>Offence</b>	<b>Maximum Penalty</b>	<b>Tariff</b>
Theft (summary offence)	10 years	2 months to 9 months <i>Ratusili v State</i> [2012] FJHC 1249

<b>Burglary</b> (indictable/summary offence)	<b>13 years</b>	<b>12/18/24 months to 3 years</b> <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
<b>Aggravated Burglary</b> (indictable offence)	<b>17 years</b>	<b>18 months/2 years to 3 years</b> <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

7. It is manifestly clear from the chart that the tariff for the offence of aggravated burglary is substantially low considering the tariff fixed by the Supreme Court in the case of *Wise (supra)* for the offence of aggravated robbery. It is also substantially lower than the tariff for robbery which carries a lesser maximum sentence (15 years for robbery and 17 years for aggravated burglary). In my view, the purpose of legislating the offence of aggravated burglary as an indictable offence and setting the higher penalty of 17 years for the said offence is defeated when a tariff lower than that for the offence of robbery is used in respect of aggravated burglary. His Lordship Justice Goundar in the recent decision in the case of *State v Apisai Takalaibau* [2018] FJHC 505; HAC154.2018 (15 June 2018) pointed out that 186 cases of aggravated burglary had been reported in 2017 and it was the highest figure in the offence list.
8. As it is noted, the higher end of the tariff for burglary is the same as the higher end of the tariff for aggravated burglary. It is also noted that the tariff for burglary is not proportionate to the tariff for the offence of robbery which is well settled.



9. Given below is the chart that reflects the tariff for aggravated burglary deduced (proportionately) from the tariff set by the Supreme Court for aggravated robbery in *Wise* (supra) which is an imprisonment term between 06 years and 14 years and the tariff for burglary deduced (again proportionately) from the established tariff for the offence of robbery which is an imprisonment term between 18 months to 06 years. This chart also indicates the tariff identified for the offence of theft in the case of *Waga* (supra).



10. In my view the judgment in the case of *Legavuni v State* [2016] FJCA 31; AAU0106.2014 (26 February 2016) does not preclude the High Court from revisiting the tariff for the offence of aggravated burglary for the reason that the appropriateness of the tariff for the offence of aggravated burglary was not an issue before Court of Appeal in that case and therefore that issue was not considered by the Court of Appeal. The following statement made by His Lordship Basnayake JA in the said case confirms the above contention;

*“At the time of commission of this offence the tariff that was in operation was between 18 months to 3 years. Considering the fact that the appellant was charged for the offence of aggravated burglary, I am of the view that the point to start should be at the highest level”*

11. It is clear that, in the above paragraph, the Court of Appeal had simply made an observation that the tariff between 18 months to 03 years was the tariff in operation and had not made an informed decision that the tariff for the offence of aggravated burglary should be between 18 months to 3 years. On the other hand, the proposed tariff for the aggravated burglary in *Prasad* (supra) is simply deduced from the tariff sanctioned by the Supreme Court for the next serious property offence which is aggravated robbery and therefore cannot be viewed as a new tariff altogether. The same applies for the proposed tariff for the offence of burglary which is deduced from the well settled tariff for robbery.
12. In fact, I wish to point out that, if the tariff for the offence of robbery is also adjusted based on the tariff in *Wise* (supra), the range should be between 6 years and 12 years. I believe the courts should seriously consider making that adjustment in the near future if it becomes clear that the sentences imposed by the courts have not been able to create the expected deterrent effect on the prevalence of property offences.

13. Coming back to your case, 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 against each of you for the two offences you have committed. 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."*

14. The fact that the two of you burgled a business premises will be considered as an aggravating factor given the negative effect such crimes have on the economic activities of the country. This aggravating factor is relevant to both of you. I will also take into account the total value of the items you have stolen as admitted, which is \$3,362.00 when I determine the period to be added to your sentence in view of the aforementioned aggravating factor.

#### *Sentence of the first accused*

15. Metui Naulu, in your cautioned interview, you have admitted that it was your idea to break into the store. Therefore, I would conclude that there was premeditation on your part. This would be considered as an additional aggravating factor against you.
16. You are 27 years old. You are from Vanua Levu and you had come to Suva about 1<sup>1</sup>/<sub>2</sub> years ago to seek employment. In your mitigation, you have submitted that;
- a) You are remorseful; and
  - b) This is your first offence and that you will not re-offend.



17. I would select 6 years as the starting point of your aggregate sentence. In view of the above aggravating factors I would add 2 years and 6 months to your sentence. I would deduct 4 years in view of the above mitigating factors. Now your sentence is an imprisonment term of 4 years and 6 months. 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 3 years. The non-parole period I would fix in view of the provisions of section 18 of the Sentencing and Penalties Act would be 2 years.
18. For the purpose of promoting rehabilitation, I would partially suspend your sentence in terms of section 26(1) of the Sentencing and Penalties Act. I order that you serve the first 01 year of your sentence forthwith and the remaining period of 02 years is suspended for 3 years.
19. You have been in custody in view of this matter since 26/03/18. 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. I hold that the period to be regarded as served should be 03 months.
20. Accordingly, you are sentenced to an imprisonment term of 03 years with a non-parole period of 02 years. Your sentence is partially suspended where you shall serve 01 year of your sentence forthwith and the remaining period of 02 years is suspended for 03 years. Therefore, your non-parole period would be relevant only in the event you are to serve your full term.
21. In view of the period spent in custody, the time remaining to be served before your sentence is suspended shall be 09 months.

*Sentence of the second accused*

22. Samuela Sinusetaki, according to your cautioned interview there was no preplanning involved on your part.
23. You are 18 years old. In your mitigation you also say that you are remorseful and you are a first offender. You request this court to give you a chance so that you can go back to school and continue your education.
24. I would select 06 years as the starting point of your aggregate sentence. In view of the above aggravating factors I would add 02 years to your sentence. I would deduct 04 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 20 months.
25. For the purpose of promoting rehabilitation, especially in your case, considering your age and your willingness to continue your education, I would partially suspend your sentence in terms of section 26(1) of the Sentencing and Penalties Act. I order that you serve the first 03 months of your sentence forthwith and the remaining period of 02 years and 05 months is suspended for 03 years.
26. You have been in custody in view of this matter since 26/03/18. 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. I hold that the period to be regarded as served should be 03 months.

27. Accordingly, you are sentenced to an imprisonment term of 02 years and 08 months with a non-parole period of 20 months. Your sentence is partially suspended where you shall serve 03 months of your sentence forthwith and the remaining period of 02 years and 05 months is suspended for 03 years. Therefore, your non-parole period would be relevant only in the event you are to serve your full term.
28. In view of the fact that I have regarded the 03 months you have spent in custody as time already served, you have already served the period of imprisonment you were required to serve before your sentence is partially suspended. In the circumstances, you will be released forthwith. You are expected to honour the undertaking you have given this court, in that, you will complete your education and not to get involved in any activity that would violate the law.
29. I hereby order the Social Welfare Department to provide you and your parents with the necessary assistance and the guidance within the mandate of the said department in order to pursue your studies. The High Court Criminal Registry is accordingly directed to take appropriate action to have a copy of this judgment served to the relevant officer in the Social Welfare Department.
30. The sentences are as follows;
- First accused - Imprisonment term of 03 years with a non-parole period of 02 years. You shall serve 12 months of your sentence forthwith and the remaining period of 02 years is suspended for 03 years. In view of the period spent in custody, the time remaining to be served before your sentence is suspended shall be 09 months.
- Second accused - Imprisonment term of 02 years and 08 months with a non-parole period of 20 months. You shall serve 03 months of your sentence forthwith and the remaining period of 02 years and 05 months is

suspended for 03 years. In view of the period spent in custody you are deemed to have served the term before the suspension of your sentence and you shall be released forthwith.



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.