

IN THE HIGH COURT OF FIJI AT SUVA

CASE NO: HAC. 202 of 2018

[CRIMINAL JURISDICTION]

STATE

V

TIMOCI BULEWA

Counsel : Ms. Lata for State
Mr. I. Romanu for Accused

Sentenced on : 10 August 2018

SENTENCE

1. Timoci Bulewa, you have pleaded guilty to the two offences produced below. After considering the summary of facts you have admitted and your cautioned interview statement, this court was satisfied that the plea you have entered was unequivocal. You were accordingly convicted as charged for the following offences;

COUNT ONE

Statement of Offence

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

Particulars of Offence

TIMOCI BULEWA with another on the 12th day of May 2018 at Nasinu in the Central Division broke and entered into the house of Tomasi

Turagaloaloa as a trespasser with intent to commit theft.

COUNT TWO

Statement of Offence

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

Particulars of Offence

TIMOCI BULEWA with another on the 12th day of May 2018 at Nasinu in the Central Division dishonestly appropriated 1xSimmons brand TV flat screen valued at \$450.00, the property of Tomasi Turagaloaloa with intention of permanently depriving Tomasi Turagaloaloa of the said property.

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

The Complainant is Tomasi Turagaloaloa (hereafter PW1), 47 years, Market Vendor of Lot 37 Maba Place, Kalabu.

The Accused is Timoci Bulewa (hereafter Accused), 27 years, Unemployed of Lot 11 Cevuga Place, Kalabu.

The Witness is Selina Moceinavaqa Sarau (hereafter PW2), 55 years, Control Officer at City Security residing at Lot 7, Lagakali Place, Kalabu.

- 1. On 12th day of May, 2018 at about 5.30pm PW1 was at the market when PW2 came and informed PW1 that she saw the Accused with another went to PW1's house and stole PW1's Simmons brand Flat screen TV (hereafter TV) worth \$450.00.*
- 2. PW2 was at home when she saw the Accused with another was carrying something in their hands. As she looked closer she could clearly identify the Accused since they live around PW2's area. The Accused with another carried the TV and brought it to PW2's compound. Upon being asked they told PW2 that they got the TV from PW1's house. PW2 told them to take the TV back to PW1's house. However, they took the TV to the Accused's house which is just at the back of PW2's house.*
- 3. PW2 then caught a taxi and went straight to PW1 and informed him that the Accused with another has taken his TV. PW1 and PW2 then went and reported the matter at*

Kalabu Police Post. On their way back home, they saw the Accused with another cross cutting PW2's compound again with the TV and when they saw PW1 and PW2 they left the TV at the corner of PW2's house and ran away.

4. The Accused was arrested and interviewed under caution. The Accused made admissions in his Record of Interview at question and answer 28 onwards. The Accused admitted that he went with another and brought the TV screen from PW1's home when there was no one at home at question number 28 and 29. He admitted that when he and the accomplice found out that the house was vacant, the accomplice went under the house while the Accused stood beside the house at question number 30 and 31. The Accused admitted that the Accomplice broke the floor and gained entry to the house while the Accused was just standing there looking at him at question number 32 and 33. The Accused further admitted that the Accomplice then brought the TV from the place he entered from under the house and told the Accused to carry it to the roadside at question number 34 and 35. [A copy of the Record of Interview is annexed].
 5. The Simmons brand Flat screen TV was recovered.
 6. The Accused is charged and has pleaded guilty to one count of Aggravated Burglary contrary to section 313(1)(a) of the Crimes Act 2009 and one count of Theft contrary to section 291(1) of the Crimes Act 2009.
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 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 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."

6. It was revealed during the hearing on mitigation that the co-accused who is not charged is the son of the complainant. According to your cautioned interview, the said co-accused is the one who broke into the complainant's house and brought the TV out from the house. He then gave it to you and told you to carry it to the roadside. The two of you then took the TV to PW2's house where the two of you were drinking rum before the alleged incident. The TV was recovered and value of it as agreed is \$450. Considering the circumstances of this case, I am unable to identify any aggravating factors that are relevant to you.
7. Even though the summary of facts you have admitted establishes the elements of the offences you are charged with, in my judgment, your culpability and the degree of responsibility as reflected from the circumstances of this case is relatively low.
8. You are 27 years old and unemployed. You have a 3 year old daughter. In your mitigation, apart from the fact that you have entered an early guilty plea, your counsel had submitted that;
- a) You are a first offender;


- b) You are remorseful;
- c) You were influenced by the complainant's son to assist him; and
- d) You have cooperated with the police.

9. I would select 6 years as the starting point of your aggregate sentence. I would deduct 3 years in view of the above mitigating factors. Now your sentence is an imprisonment term of 3 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 2 years. Considering all the circumstances of this case, the non-parole period I would fix in view of the provisions of section 18 of the Sentencing and Penalties Act would be 1 year.
10. 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 03 months of your sentence forthwith and the remaining period of 21 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.
11. You have been in custody in view of this matter since 12/05/18. 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.
12. Accordingly, you are sentenced to an imprisonment term of 02 years with a non-parole period of 01 year. Your sentence is partially suspended where you shall serve 03 months of your sentence forthwith and the remaining period of 21 months is suspended for 03 years. 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.

13. The court clerk will explain to you the effects of a suspended sentence.
14. Thirty (30) days to appeal to the court of appeal.




Vincent S. Perera
JUDGE

Solicitors;
Office of the Director of Public Prosecutions for State.
MIQ Lawyers, Suva for Accused.