

COUNT TWO

Statement of Offence

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

Particulars of Offence

SENIUA WATI TIKOIVANUABALAVU with another on the 20th day of April 2018 at Raiwaqa, Suva in the Central Division, dishonestly appropriated 1x Modyl Washing Machine valued at \$350.00, 1x Safety Boot black valued at \$160.00, 1x Black Boot valued at \$150.00, 1x Radio valued at \$60.00, all to the total value of \$720.00 the properties of Olimiva Tabua with intention of permanently depriving Olimiva Tabua of the said properties.

- [3] Summary of Facts were submitted by the State and read over and explained to you. Having understood, you admitted them to be true and correct.

Summary of facts state that,

On 18th of April 2018, Olimiva Tabua (PW1) went to Tailevu with her two daughters to attend a funeral. On 20th of April 2018, she received a call that her house at 296, Ratu Mara Road, was broken into. PW1 came back on 21st April 2018 to her house and found out that the back door and window was broken and the following items were stolen:

- | | |
|-----------------------------|-----------------|
| a) 1x Modyl washing Machine | \$350.00 |
| b) 1x Safety boot | \$160.00 |
| c) 1x Black boot | \$150.00 |
| d) 1x Radio | <u>\$ 60.00</u> |
| All to the value of | \$720.00 |

Accused was later arrested and interviewed under caution whereby he admitted that on Friday, the 20th of April 2018, the accused with another was drinking just beside PW1's house when the accomplice told the accused to come with him and carry a Washing Machine from PW1's house. The accused went with him to PW1's house whereby the accomplice had removed the louvers from the windows and had jumped inside the house. The accomplice then went inside the house while the accused was standing outside. The accomplice then gave the Washing Machine to the accused and the accused carried the washing machine through the waited for the accomplice outside the house. The accused saw two pairs of boots and a portable radio. So he took those boots and radio, put them inside an old bag and waited for the accomplice. Then the accused and the accomplice covered their washing machine with a blanket and carried it and hid it under a house located few blocks away from PW1's house.

Full recovery of stolen articles was made and was positively identified by the PW1. The portable radio was recovered from the PW2. The accused has given the radio to PW2 to

keep whereby the PW2 has given \$30.00 cash to the accused. The washing machine and the boots were recovered from the house of the accused.

[4] I find that the admitted facts support all elements of the charge in the Information, and find the charge proved on the Summary of Facts agreed by you. Accordingly, I find you guilty on your own plea and I convict you for the offences of Aggravated Burglary and Theft as charged.

[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 depriving him of the property. The maximum penalty for theft is 10 years imprisonment under section 291 of the Crimes Act.

[6] State submits that the tariff for Aggravated Burglary is 18 months to 3 years and that tariff has been approved by the Court of Appeal in **Leqavuni v State** [2016] FJCA 31: AAU 106.2014 (26 February 2016). As per Hon. Justice Perera, in **State v Naulu** - [2018] FJHC 548 (25 June 2018)

*"In my view the judgment in the case of **Leqavuni 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."*

[7] On careful consideration of the provisions of the Crimes Act 2009, it is apparent that legislature intended to consider Aggravated Burglary as a very serious crime and maximum penalty wise placed it in between the offences of Robbery and Aggravated Robbery. Therefore, it is quite obvious that the offence of Aggravated Burglary should carry a higher tariff than the offence of Robbery. It is well established that the tariff for Robbery is 2 to 7 years. As opined with sound reasoning, by Hon. Justice Perera, in **State v Naulu** [2018] FJHC 548 (25 June 2018) the tariff for Aggravated Burglary is said to be from 6 to 14 years.

[8] I am inclined to agree with Hon. Justice Perera's view and hold the tariff for Aggravated Burglary should be 6 to 14 years.

[9] As for the offence of theft the accepted tariff would range from 2 months to 3 years (**Ratusili v State** [2012] FJHC 1249; HAA 011.2012).

[10] The two offences you have committed are founded on the same facts. Therefore, as for section 17 of the Sentencing and Penalties Act, it would be appropriate to impose an

aggregate sentence 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.”

- [11] 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 organization, 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.”

- [12] 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 recovered. Intrusion occurred when the owner was not at home. No prior planning was involved. I also take into consideration that you have already been in remand for a period of 15 days.
- [13] The mitigating factors are your early guilty plea, expression of remorse and your previous good character.
- [14] 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.
- [15] Since you are a first time offender, for the purpose of promoting rehabilitation, I would suspend your sentence in terms of section 26(1) of the Sentencing and Penalties Act, for a period of 5 years. Therefore, your non-parole period would be relevant only in the event you are to serve your term.


Chamath S. Morais
JUDGE



Solicitors: *Office of the Director of Public Prosecutions for the State
Legal Aid Commission, Suva for the Accused*