

IN THE HIGH COURT OF FIJI
AT SUVA
[CRIMINAL JURISDICTION]

CRIMINAL CASE NO. HAC 62 OF 2018

STATE

V.

1. SAMUELA TUI
2. LT

Counsel : ***MR. E.R.V. Samisoni for the State***
Ms. L. David for the Accused

Date of Hearing : ***23rd of August 2018***

Date of Sentence : ***25th September 2018***

(The 2nd Accused's name is suppressed as he is a Juvenile, and will be referred to as LT or Juvenile)

SENTENCE

1. Mr. Samuela Tui and LT, you have freely and voluntarily pleaded guilty to the counts of aggravated burglary and theft at the first opportunity. I am satisfied and convinced that you have pleaded so, unequivocally having understood the consequences of such a plea.
2. You were charged as follows;

COUNT ONE

Statement of Offence

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

Particulars of Offence

Samuela Tui and LT in the company of each other between the 25th day of January 2018 and the 26th day of January 2018 at Nasinu in the Central Division, entered as trespassers into Bhawani Dayal Arya College with intent to commit theft from that property.

COUNT TWO

Statement of Offence

THEFT: Contrary to section 291(1) of the Crimes Act of 2009.

Particulars of Offence

Samuela Tui and LT in the company of each other between the 25th day of January 2018 and the 26th day of January 2018 at Nasinu in the Central Division, dishonestly appropriated 1 x black Radio valued at \$320.00, 1 x Electric Jug valued at \$60.00, 1 x Calculator valued at \$25.00, 11 x 4 litres of Detergent and Toilet Bowl Cleaner valued at \$220.00, 2 X 6 outlet Power Boards valued at \$40.00, 1 x big roll of Toilet Paper valued at \$8.00, \$12.00 cash, 2 x 20 litres of Soya Bean Oil valued at \$100.00, 1 x 1.5 tin of Milo valued at \$30.00, 5 x 450g of Powdered Milk valued at 27.50, 15 x 220ml Sunquick Juice valued at \$ 22.50, 15 x 150g of Fresh yoghurt valued at \$22.50, 10 x 250ml of Rewa Galaxy Flavoured Milk valued at \$15.00, 22 x 500ml of Tampico Juice valued at \$44.00, 19 x 1 litre Tampico valued at \$57.00, 2 x tins of whole peeled Tomatoes valued at \$3.00, 17 x packets of Pop Corn valued at \$7.00, 1 x packet of Drinking straws valued at \$2.00 and 6 x packets of Lakri valued at \$3.00 all to the total value of \$1,018.50, the property of Bhawani Dayal Arya College.

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,

- i) Accused: (A1) Samuela Tui, unemployed, 18 years old, of Matana Street, Nakasi. (A2) Juvenile (LT), student, 16 years old of Gagali Place, Nakasi.
- ii) Complainant: (PW1), Bijen Singh, 42 years old, The Principal of Bhawani Dayal Arya College.
- iii) Sometime between 25th day of January 2018 and the 26th day of January 2018 A1 and the Juvenile, broke into Bhawani Dayal Arya College and stole the following items:
 - 1 x black Radio valued at \$320.00,
 - 1 x Electric Jug valued at \$60.00,
 - 1 x Calculator valued at \$25.00,
 - 11 x 4 litres of Detergent and Toilet Bowl Cleaner valued at \$220.00,
 - 2 X 6 outlet Power Boards valued at \$40.00,
 - 1 x big roll of Toilet Paper valued at \$8.00,
 - \$12.00 cash,
 - 2 x 20 litres of Soya Bean Oil valued at \$100.00,
 - 1 x 1.5 tin of Milo valued at \$30.00,
 - 5 x 450g of Powdered Milk valued at 27.50,
 - 15 x 220ml Sunquick Juice valued at \$ 22.50,

15 x 150g of Fresh yoghurt valued at \$22.50,
10 x 250ml of Rewa Galaxy Flavoured Milk valued at \$15.00,
22 x 500ml of Tampico Juice valued at \$44.00,
19 x 1 litre Tampico valued at \$57.00,
2 x tins of whole peeled Tomatoes valued at \$3.00,
17 x packets of Pop Corn valued at \$7.00,
1 x packet of Drinking straws valued at \$2.00 and
6 x packets of Lakri valued at \$3.00
All to the total value of \$1,018.50.

- iv) A1 and the Juvenile entered the school premises including the Canteen, Office and The Computer Laboratory with the help of tools such as a spanner, wheel brace and a screw driver.
- v) When PW1 returned to school on 28th January 2018, he was informed that the school was broken into and that the above items had been stolen.
- vi) After investigations were completed, it revealed that \$633.00 worth of items were recovered.
- vii) A1 and the Juvenile were arrested on 26 January 2018 and charged with these offences.
- viii) Both A1 and the Juvenile made admissions in their respective records of interview.
- ix) A1 admitted to entering the school compound with the Juvenile and another by sliding under the main gate. A1 then proceeded to break into the Office and Canteen stealing various items and placing them under a tree beside the school.
- x) The Juvenile admitted to entering the school with a1 and another and getting sets of keys from the Vice Principal's Office. He admitted to stealing various items from the Vice Principals Office and the Canteen.
- xi) Both A1 and the Juvenile were of the view that all the items were recovered.
- xii) On 31st of July, 2018 the Accused and the Juvenile pleaded guilty on their own free will to both counts as charged, in the presence of their lawyers.

4. I find that the admitted facts support all elements of the charges in the Information, and find the charges proved on the Summary of Facts agreed by you. Accordingly, I find you guilty on your own plea. Accordingly I convict the 1st Accused (A1) for the offences of Aggravated Burglary and Theft as charged, and find the same charges proved against the Juvenile.
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. It is submitted on behalf of the accused that the tariff for Aggravated Burglary is arguable as there exists two schools of thought. It is said that 18 months to 3 years tariff has been approved by the Court of Appeal in **Leqavuni v State** [2016] FJCA 31: AAU 106.2014 (26 February 2016), and many other cases.
7. Having considered this submission carefully, it is in fact questionable whether the said tariff has been well considered and/or approved by the Court of Appeal in the said case. 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.”*

8. On careful consideration of the provisions of the Crimes Act 2009, it is apparent that the 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.
9. I am inclined to agree with Hon. Justice Perera’s reasoning and hold that the tariff for Aggravated Burglary should be 6 to 14 years.
10. 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).
11. 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.”

12. The mitigating factors are your, expression of remorse, cooperating with the police to the maximum and the recovery of many of the stolen items.
13. There was no significant damage done to the property except that the canteen and the office was ransacked.

14. **Mr. Samuela Tui, the 1st Accused:**

I would select 6 years as the starting point of your aggregate sentence. I would deduct 2 years in view of the above mitigating factors. Now your sentence is an imprisonment term of 4 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 32 months. You all have spent more than a month in remand. In lieu of that I deduct 2 months from your final sentences. The remainder you'll have to serve would be 30 months. 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 20 months.

L.T., the Juvenile:

Our law does not permit me to sentence for more than two years, as for 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. Therefore, I impose you an aggregate term of two years imprisonment with a non-parole period of 16 months.

15. Now I will consider the provisions of section 26(1) of the Sentencing and Penalties Act.

Mr. Samuela Tui:

You have no previous convictions or pending cases. On the other hand, this kind of offences in this society has drastically increased due to leniency they are dealt with. However, in consideration of the submissions made on your behalf, I am of the view the majority of your term should be suspended. Therefore, you should serve three months from the sentence which is imposed above and the remainder of 27 months is suspended for a period of 5 years.

L.T., the Juvenile:

You also have no previous convictions or any other pending cases. In consideration of submissions made on your behalf, I am of the view that there is a strong possibility of you rehabilitating, mending your ways and becoming a good law abiding future citizen of this Country. Therefore, I will suspend the sentence of two years imprisonment imposed on you for a period of 5 years.

16. Therefore, all of your non-parole period would be relevant only in the event you are to serve the above suspended terms.
17. You have 30 days to appeal to the Court of Appeal if you desire so.



At Suva
25th September 2018

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