

**IN THE HIGH COURT OF FIJI AT SUVA**

CASE NO: HAC. 61 of 2018

[CRIMINAL JURISDICTION]

STATE

V

1. JONE VOSAVEIBATI
2. M. R. (Juvenile)

**Counsel** : Ms. P. Lata for State  
Ms. L. Ratidara for first accused  
Ms. L. David for the juvenile

**Hearing on** : 08 August 2018

**Sentenced on** : 27 September 2018

**PUNISHMENT OF M.R.**

1. 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 pleas you have entered were unequivocal. You were accordingly convicted as charged. The charges are as follows;

***FIRST COUNT***

*Statement of Offence*

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

*Particulars of Offence*

**JONE VOSAVEIBATI** and **M.V.R.** between the 25<sup>th</sup> day of November, 2017 to the 9<sup>th</sup> day of December, 2017, at Daliconi village, Vanuabalavu in the Eastern Division, in the company of each other, entered into the dwelling house of **TUKALOU COKANAVANUA** as trespassers with the intent to commit theft therein.

**SECOND COUNT**

*Statement of Offence*

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

*Particulars of Offence*

**JONE VOSAVEIBATI** and **M.V.R.** between the 25<sup>th</sup> day of November 2017 to the 9<sup>th</sup> day of December 2017 at Daliconi village, Vanuabalavu in the Eastern Division dishonestly appropriated (stole) cash amounting to \$1,459.35 the property of **TUKALOU COKANAVANUA** with the intention of permanently depriving **TUKALOU COKANAVANUA** of the said property.

2. Both of you have admitted the following summary of facts;

**Accused and Juvenile:** (A1) Jone Vosaveibatiki, 27 years old, farmer of Daliconi village, Vanuabalavu, Lau.

(A2) M.V.R. (juvenile) 17 years old of Lagilagi Housing, Gaji Road, Samabula (Birth Certificate attached).

**Complainant:** (PW1) Tukulou Cokanavanua, 58 yrs old, church treasurer of Daliconi village, Vanuabalavu, Lau.

On 9 December 2017 at around 4am at Daliconi village, Vanuabalavu, Lau, PW1 had returned from Suva when he discovered that his home had been broken into. PW1 rushed to his bedroom where he had left some church and canteen money underneath his bed amounting to \$1,459.35. PW1 realised that the burglary must have taken place between 25 November 2017 to 9 December 2017 – the period in which he was away in Suva. The Police were called shortly after and they attended to the scene. On 26 January 2018 the accused and juvenile were arrested and were interviewed under caution thereafter.

A1 made admissions in his Record of Interview at question and answer 34 onwards where he admitted to entering the home of PW1 with A2 by removing two louvre blades and stealing the money that was kept underneath PW1's bed. A1 also admitted to sharing the money with A2 whilst inside the bedroom.

A2 also made admissions in his Record of Interview at question and answer 15 onwards where he admitted to entering the home of PW1 with another by



*A1 also admitted to sharing the money with A2 whilst inside the bedroom.*

*A2 also made admissions in his Record of Interview at question and answer 15 onwards where he admitted to entering the home of PW1 with another by removing two louvre blades and stealing cash that was kept in one of the rooms. A1 and A2 were then charged with these offences.*

*Both A1 and A2 had restituted \$1300 to PW1 (some of the money that was stolen). On 25 July 2018 A1 and A2, in the presence of their counsel pleaded guilty to both counts as charged.*

*A1 and A2 are first offenders.*

3. As I have explained in *State v Prasad* [2017] FJHC 761; HAC254.2016 (12 October 2017) and *State v Naulu* [2018] FJHC 548 (25 June 2018), 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. The summary of facts does not disclose any aggravating factor. You have taken the position that the entire amount that was stolen was returned to the complainant though the prosecution says that the \$1300 you have returned is only part of the stolen money. I note that the amount mentioned in the charge is \$1,459.35. For the purpose of sentencing, I would consider that you have restituted the total amount that was stolen.
7. You are 17 years old. You are the youngest of 7 siblings. In your mitigation, apart from the fact that you have entered an early guilty plea you have submitted that;
  - a) You are a first offender;
  - b) You are remorseful;
  - c) Stolen money was restituted; and
  - d) You have cooperated with the police.
8. Given the provisions of section 30 of the Juveniles Act, the maximum term of imprisonment to be imposed on you is 2 years. Considering all the circumstances of the offending, the above mitigating factors and the fact that you have entered an early guilty plea, I would impose a term of 3 months imprisonment as your punishment.
9. For the purpose of promoting rehabilitation, I would suspend your punishment in terms of section 26(1) of the Sentencing and Penalties Act for a period of 5 years.
10. Accordingly, your punishment is an imprisonment term of 03 months and it is suspended for 05 years.
11. The court clerk will explain you the effects of a suspended term of imprisonment.

12. Thirty (30) days to appeal to the Court of Appeal.



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 State.

Legal Aid Commission for the juvenile.