

IN THE HIGH COURT OF FIJI AT SUVA

CASE NO: HAC. 61 of 2018

[CRIMINAL JURISDICTION]

STATE

V

- 1. JONE VOSAVEIBATI KI**
- 2. M. R. (Juvenile)**

Counsel : Ms. P. Lata for State
Ms. L. Ratidara for 1st Accused
Ms. L. David for 2nd Accused

Hearing on : 08 August 2018

Sentenced on : 27 September 2018

SENTENCE

1. Jone Vosaveibatiki, 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 KI and M.V.R. between the 25th day of November, 2017 to the 9th 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 KI and M.V.R. between the 25th day of November 2017 to the 9th 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 years 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

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 27 years old and single. 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;
 - d) You have reconciled with the complainant when the money was returned;
and
 - e) You have cooperated with the police.
8. 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 2 years and 8 months.
9. 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.
10. There are strong mitigating factors in your favour. It is submitted that you have been able to secure employment after you were released on bail. You have returned the stolen money and had sought forgiveness from the complainant. Therefore, in determining your punishment, I would focus more on rehabilitation.

11. I consider it appropriate to partially suspend your sentence in terms of section 26(1) of the Sentencing and Penalties Act. I order that you serve the first 05 months of your sentence forthwith and the remaining period of 02 years and 03 months is suspended for 5 years.
12. It is submitted that you have been in custody in view of this matter since 26/01/18 till 02/07/18. 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 05 months.
13. Given the period you have spent in custody, the time you should serve before your sentence is to be suspended is regarded as served.
14. Accordingly, you are sentenced to an imprisonment term of 2 years and 8 months with a non-parole period of 02 years. You shall serve 05 months of your sentence forthwith and the remaining period of 02 years and 03 months is suspended for 05 years. In view of the period spent in custody you are deemed to have served the term of imprisonment you are required to serve before the suspension of your sentence.
15. The court clerk will explain you the effects of a suspended sentence.
16. 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 accused.