

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

**CASE NO: HAC. 203 of 2018**

**[CRIMINAL JURISDICTION]**

**STATE**

**V**

**VICTHAL VIKASH PRASAD**

**Counsel** : Mr. E. Samisoni & Mr. Z. Zunaid for the State  
Mr. K. Prasad for the Accused

**Sentenced on** : 19 March 2019

**SENTENCE**

1. Victhal Vikash Prasad, you were charged with another for the offences of aggravated burglary and theft. You pleaded guilty to the two charges before the trial but you maintained that you committed the two offences all by yourself. The other accused was acquitted after trial. Given your admissions and also the evidence led in the trial against the said other accused, you were convicted of the offences of burglary (section 312 of the Crimes Act) and theft (section 291 of the Crimes Act).
2. On 26 December 2017, you broke into the complainant's house while the complainant was away and stole one HP Laptop, assorted jewelry and \$600.00 cash.

You and the complainant knew each other. The laptop was later recovered by the police.

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), the tariff for the offence of burglary which carries a maximum penalty of 13 years imprisonment should be an imprisonment term within the range of 18 months to 06 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. Since you and the complainant knew each other, I find that there is a breach of trust in this case. This, I would consider as an aggravating factor.

7. You have four previous convictions. Therefore, you are not entitled to receive a discount for previous good behavior. The only mitigating factor in your favour apart from the fact that you have pleaded guilty is the fact that you have cooperated with the police.
8. Your counsel has submitted that you are 22 years old. You are married and you have a 1 year and 6 months old son.
9. The offence of burglary is a prevalent offence. I would select 24 months as the starting point of your aggregate sentence. I would add 18 months in view of the aforementioned aggravating factor and I would deduct 06 months in view of the above mitigating factor. Now your sentence is an imprisonment term of 36 months.
10. You pleaded guilty to the charges on the first day of the trial. Therefore it was a late guilty plea. However, you will be given a discount of 06 months in view of your guilty plea.
11. Accordingly, your final aggregate sentence is an imprisonment term of 30 months. I have decided not to suspend your sentence given the four previous convictions in your previous convictions report, especially the conviction for the offence of burglary in 2017.
12. The non-parole period I would fix in view of the provisions of section 18 of the Sentencing and Penalties Act would be 24 months.
13. The prosecution submits that you were arrested for this matter on 12/05/18. Accordingly, you have been in custody for a period of 10 months and 1 week. The period you have spent in custody shall be regarded as a term of imprisonment already.

served by you in terms of the provisions of section 24 of the Sentencing and Penalties Act.

14. In the result, you are sentenced to an imprisonment term of 30 months with a non-parole period of 24 months. Considering the time spent in custody, the time remaining to be served is as follows;

Head Sentence - 19 months and 3 weeks

Non-parole period - 13 months and 3 weeks

15. 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 the State.

Legal Aid Commission for the accused.