

**IN THE HIGH COURT OF FIJI
AT LABASA
CRIMINAL JURISDICTION**

Criminal Case No. HAC 51 of 2018

STATE

v

**SAKIUSA VELOTURAGA
ASESELA TOKONIREWA**

Counsel : Miss D. Rao for the State
Miss K. Boseiwaqa (L.A.C.) for both Accused

Date of Plea : 5 April 2019

Date of Sentence: 11 April 2019

SENTENCE

1. The accused were charged with the following three counts:

COUNT 1

BURGLARY: Contrary to section 312(1) of the Crimes Act 2009

Particulars of Offence

SAKIUSA VELOTURAGA between 2 and 3 July 2018, at Labasa in the Northern Division, entered the Colour Dragon Restaurant

as a trespasser with intent to commit theft from the said restaurant.

COUNT 2

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

Particulars of Offence

SAKIUSA VELOTURAGA between 2 and 3 July 2018 at Labasa in the Northern Division, dishonestly appropriated \$800 cash, BH cigarettes approximately worth \$225 and a black handbag worth \$50 all to the total value of \$1075 from Colour Dragon Restaurant belonging to Guo Huano with the intention of permanently depriving the said Guo Huano of the said property.

COUNT 3

RECEIVING: Contrary to section 306(1) and 3(a) of the Crimes Act 2009

Particulars of Offence

ASESELA TOKONIREWA on 3 July 2018 at Labasa in the Northern Division, dishonestly received stolen cash in the amount of approximately \$18 from **SAKIUSA VELOTURAGA** which belonged to Guo Huano knowing or believing the cash of approximately \$18 to be stolen by the said **SAKIUSA VELOTURAGA**.

2. They each entered pleas of guilty to those charges and having agreed a set of facts put to them, they were each found guilty and convicted of the relevant counts.

Facts

3. Mr. Guo Huang owns a Chinese restaurant (“Colour Dragon”) in Labasa Town. On the 3rd July 2018 he discovered that the restaurant had been broken into during the night.
4. The first accused intending to steal had entered the restaurant by removing louvre blades from a window and climbing into the restaurant through a window into the kitchen. In the restaurant the first accused, with intent to permanently deprive the said Mr. Guo took approximately \$500 worth of coins, cigarettes worth \$225 and a black handbag.
5. The following evening the first accused met the second accused and they spent the coins on food and alcohol. They were seen to be buying drinks with coins at a local night club. They drew attention to themselves and were identified by their unusual method of payment.
6. The second accused had been told by the first accused that the coins were stolen property.
7. The maximum penalty for burglary simpliciter is a term of imprisonment of 13 years and the tariff range has been held to be between 12 and 36 months (**Waqavanua** HAA 13/2011).
8. The maximum penalty for theft is 10 years imprisonment and the tariff band for sentencing is 2 months to many years for theft in a fiduciary relationship.
9. A second offence of theft must attract a sentence of at least 9 months.

10. The maximum penalty for receiving is ten years' imprisonment. There has been no tariff set but a proper range should be sentences from suspended sentence to 3 years' imprisonment. The value of the goods received and the circumstances of the receipt will be crucial factors in determining the sentence within that range.
11. The first accused is 24 years old and single. He is a farmer. He has one previous conviction for theft and one previous for burglary, an offence for which he is still serving a term of imprisonment.
12. He has handed up a personal handwritten letter of mitigation expressing remorse and promising to lead a crime free life in the future. He longs to be free to support his 73 year old father.
13. The second accused is 26 years old, married and also a farmer. He is the sole breadwinner for his grandfather and parents. He has a clear record. He spent one month on remand awaiting determination of this count.
14. Both accused co-operated with the authorities and entered a plea of guilty at a very early stage of proceedings.

First Accused

15. For this offence of burglary simpliciter, I take a starting point of 2 years imprisonment. It was fortunate that there was no person inside the restaurant who could have been harmed. His previous record does not afford him any credit nor does it lend credence to his promise to never re-offend.

16. I am however sympathetic to his claim of remorse and his wish to help his family. And for those mitigating feature I reduce the sentence to 18 months imprisonment. For his plea of guilty I reduce the sentence by further 6 months meaning that he will serve a total of 12 months imprisonment for this burglary.
17. The theft offence goes *pari passu* with the burglary and it not being his first theft sentence it must attract a term of at least 9 months. I sentence him to 12 months for the theft to be served concurrently with the sentence for burglary.

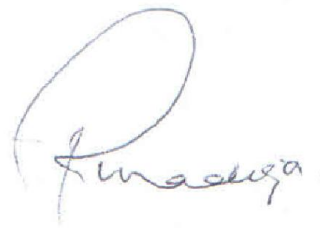
Second Accused

18. The second accused is a first offender and it is very important that he doesn't go to a prison environment with other hardened criminals. His offending is minimal spending \$18 stolen money on alcohol. He entered a plea of guilty at an early stage and co-operated with the Police.
19. I sentence him to a term of 12 months imprisonment, suspended for 12 months.
20. I order his counsel to explain to him the implications of a suspended sentence.

Orders

1. For the offence of burglary the first accused is sentenced to 12 months imprisonment.
2. For the offence of theft he is sentenced to a concurrent term of 12 months imprisonment.

3. This concurrent sentence to be served concurrently with the term he is already serving.
4. I make no order as to a minimum term for the first accused.
5. For the offence of receiving, I sentence the second accused to a term of 12 months' imprisonment, suspended for 12 months.



P. K. Madigan
Judge



At Labasa
11 April 2019