

IN THE HIGH COURT OF FIJI

AT SUVA

CRIMINAL JURISDICTION

CRIMINAL CASE NO.: HAC 271 OF 2018

STATE

-v-

JESONI QORO

Counsel: Mr. S.I. Shah for Prosecution

Ms. L.David for Defence

Date of Sentence : 13 June 2019

SENTENCE

1. **Jesoni Qoro**, you were charged with one count of Aggravated Burglary and one count of Theft. The information upon which you were charged is as follows:

COUNT 1

Statement of Offence

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

Particulars of Offence

JESONI QORO WITH ANOTHER on the 10th day of June 2018, at Raiwaqa, in the Central Division, entered into a container belonging to **RUPES INVESTMENT LTD** as trespasser, with intent to commit theft.

COUNT 2

Statement of Offence

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

Particulars of Offence

JESONI QORO WITH ANOTHER on the on the 10th day of June, 2018, at at Raiwaqa, in the Central Division, dishonestly appropriated, 1xBoda Electric drill valued at \$250.00, 1xRed welding plant valued at \$ 970.00, 1xblue bolt cutter valued at \$ 148.00, welding plant wire (40 meters) valued at \$ 784.00, 1x red wheel barrow valued at \$110.00 and a water baster valued at \$229.00 all to the total value of \$3227.00 the property of **RUPES INVESTMENT LTD** with intention of permanently depriving the said **RUPES INVESTMENT LTD** of the said properties.

2. When the information was read to you in court, you pleaded not guilty to the charges. On the trial date, you informed through your counsel that you have changed your mind and you wanted to withdraw the 'not guilty plea'. You confirmed that you are withdrawing the 'not guilty plea' on your own free will without being influenced by anyone. When the court allowed the application and read the charge again to you, in the language you preferred, you freely and voluntarily pleaded guilty to each count. You understood the charges, consequence of the guilty plea and the sentencing tariffs for offences you have committed. I am satisfied that your guilty pleas are informed and unequivocal and entered freely and voluntarily.

3. You agreed the following summary of facts when it was read to you in court.

On the 10th of June 2018 at about 16.45 hours a report was received from one Patrick Chung (PW-1), 45 years, Director of Nice Harmony working for RUPS Investment that a burglary had occurred at their premises in the early hours of the morning. Investigations were carried out and the accused Jesoni Qoro (the accused) was arrested and charged for one count of aggravated burglary and one count of theft.

In his caution interview (annexed hereto and marked as 'A1' is the caution interview of the accused), the accused admitted at question 28 that one Aseri his neighbour had told him about a place in Laucala Bay Road about a container which contains some electrical tools. At question 30 he says that Aseri asked him to accompany him to go and check at Laucala Bay Road. He admits at question 32 that him and Aseri then got off the bus at Nabua and subsequently hired a cab which dropped them both of Muaniwatu settlement at Vatuwaqa.

Further at question 34 he states "we followed a track that crosses to the new Rups apartment vacant land and Aseri walked towards a fenced compound where a big container was located and he told me to wait so I waited outside the compound and I saw him climbed over the fence inside the compound walked towards the container and I could hear that he had broken the door of the container.

The accused then stated that he saw Aseri coming out and pushing a wheelbarrow out of the container. They then loaded the stolen items into a taxi and went back to Kalabu.

The accused is a first offender (annexed hereto and marked as A2'is the previous conviction).

4. In the caution interview, which was attached to the summary of facts, you have admitted that you participated in the commission of these offences. The admissions reveal that you had participated in the crimes with the full knowledge that your accomplice entered the compound of the complainant late at night with the intention to steal the property of the complainant. You failed to question your friend as to why he accompanied you to the property late at night when no one was there. When you heard the breaking of the container door, you did not raise alarm. You just waited outside and later assisted your friend in loading the stolen items in a taxi and moving those items away from the property. You admitted that you knew the property was stolen. The facts agreed satisfy all the elements of each offence you are charged with. You are found guilty and convicted on each count as charged.

5. The maximum punishment for Aggravated Burglary under Section 313 (1) (a) is an imprisonment term of 17 years and the maximum punishment for Theft is an imprisonment term of 10 years.

6. The tariff for the offence of Aggravated Burglary is between 18 months to 3 years imprisonment. This tariff has been adopted in several decided cases: *State v. Mikaele Buliruarua*[2010] FJHC 384; HAC 157.2010 (6 September 2010); *State v. Nasara*[2011] FJHC 677; HAC 143.2010 (31 October 2011); *State v. Tavualevu*[2013] FJHC 246; HAC 43.2013 (16 May 2013); *State v. Seninawanawa*[2015] FJHC 261; HAC 138.2012 (22 April 2015); *State v. Seru*[2015] FJHC 528; HAC 426.2012 (6 July 2015); *State v. Drose*[2017] FJHC 205; HAC 325.2015 (28 February 2017); and *State v. Rasegadi & Another* [2018] FJHC 364; HAC 101.2018 (7 May 2018) and recently in *State v Tukele -* [2018] FJHC 558; HAC179.2018 (28 June 2018).

7. For the offence of Theft, the tariff was discussed in *Waga v State* [HAA 17 of 2015]. Accordingly, the tariff for the offence of Theft should be 4 months to 3 years imprisonment.

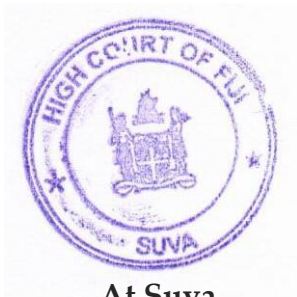
8. In assessing the objective seriousness of your offending, I examined the degree of culpability of your offending and the loss caused to the complainant. Your culpability is comparatively less when compared with that of your accomplice who is still at large. Some of the stolen items have been recovered. Having considered all these factors, I would pick a starting point of 24 months.

9. There are no aggravating features in your offending.

10. In mitigation, your counsel has informed the court that you have entered a guilty plea and that you have been extremely remorseful of your actions. You are 22 years of age. You are a first and young offender. You were a student at FNTC when you committed these offences. You have co-operated with police to recover some of the items from your accomplice's house. You did not personally gain anything from these offences. You promise not to reoffend and you beg for a second chance to rehabilitate yourself. You seek mercy of this court. I consider your guilty plea, albeit late, as evidence of genuine remorse. You have also saved court time and resources by pleading guilty to the charge.
11. In terms of section 17 of the Sentencing and Penalties Act, I would impose an aggregate sentence for both counts in view of the fact that you were convicted based on the same facts arising out of a single transaction.
12. For mitigating factors, I deduct 6 months to arrive at 18 months. You were in remand for nearly one year. The time spent in remand is discounted separately. Now your sentence is 6 months' imprisonment.
13. The courts have a duty to denounce and deter this kind of anti-social behaviour. At the same time, rehabilitation of young and first offenders should be promoted. You are a young and first offender having a good rehabilitation prospect. The primary purpose of this punishment is

rehabilitation. I have taken into consideration your potential for rehabilitation in view of your youth and clean record.

14. I sentence you to 6 months' imprisonment.
15. Taking into consideration your guilty plea, cooperation extended to police to recover the stolen items, remorse, youth and clear record, I am inclined to suspend your sentence for a period of 2 years.
16. **Jesoni Qoro**, you are sentenced to 6 months' imprisonment to be suspended for a period of 2 years. If you are convicted of any other offence during the next two years, the suspended sentence may be activated.



At Suva

On 13th June, 2019

A handwritten signature in black ink, appearing to read "Aruna Aluthge".

Aruna Aluthge
Judge

Counsel: **Office of the Director of Public Prosecution for Prosecution**
 Office of the Legal Aid Commission for Accused