

IN THE HIGH COURT OF FIJI AT SUVA

CASE NO: HAC. 13 of 2019

[CRIMINAL JURISDICTION]

STATE

V

VT (Juvenile)

Counsel : Ms. U. Tamanikaiyawu for State
Ms. L. David for Accused

Date of Sentence : 18 June 2019

[The name of the juvenile offender is suppressed. Accordingly, the juvenile will be referred to as "VT". No newspaper report or radio broadcast of the proceedings shall reveal the name, address or school, or include any particulars calculated to lead to the identification of the said juvenile.]

PUNISHMENT

1. VT, you have pleaded guilty to the charges produced below and were found guilty as charged accordingly on 04/06/19;

FIRST COUNT

Statement of Offence

AGGRAVATED BURGLARY: contrary to section 313 (1)(a) of the Crimes Act 2009.

Particulars of Offence

VT with others between the 1st day of December 2018 to 31st day of January 2019, at Beqa, in the Central Division, with each other entered into the property of **BEQA YANUCA SECONDARY SCHOOL** as trespassers with intent to commit theft.

SECOND COUNT

Statement of Offence

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

Particulars of Offence

VT with others between the 1st day of December 2018 to 31st day of January 2019, at Beqa in the Central Division, with each other dishonestly appropriated 1 x Sim Card, the property of TERESIA BENAU with the intention to permanently deprive TEREISA BENAU of the said property.

THIRD COUNT

Statement of Offence

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

Particulars of Offence

VT with others between the 1st day of December 2018 to 31st day of January 2019, at Beqa in the Central Division, with each other dishonestly appropriated 1 x Power bank charger, the property of BEQA YANUCA SECONDARY SCHOOL with the intention to permanently deprive BEQA YANUCA SECONDARY SCHOOL of the said property.

2. You have admitted the following summary of facts;

The Juvenile

- VT - 17 years of age, Student of Nawaisomo village.

The Complainant

- TERESIA BENAU - 37 years of age, School Teacher of Beqa Yanuca Secondary School.

Sometime between the 1st December 2018 and 31st January 2019, the complainant, a school teacher who was residing at the teacher's barracks had left her mobile phone in the school library to charge. At the same time there were several boys that had come to the school on the same day around 9am to cut grass, amongst those boys were Juvenile, Siro and Tumo.

At around 12pm Juvenile, Siro and Tumo left the school compound to go and have lunch and upon returning to the school compound they completed cutting the grass. Once they finished cutting the grass, the Juvenile entered the school library with Tumo without permission whilst Siro waited outside. Upon entering the library Tumo removed a sim card from the complainant's phone which was charging. The Juvenile and Tumo then exited the library and went to the school grounds. Later on

the same day Juvenile, Siro and Tumo entered the Teachers staff room and took a power bank charger before returning to Raviravi village.

After they had left the school compound, the complainant went back to the library to check on her mobile phone and realized that her sim card had been stolen. The complainant went to see the village headman and informed him of what had happened.

The matter was reported to the police and on 11/01/19 whereby the Juvenile was arrested and taken in by police for questioning. Upon being questioned by police the Juvenile admitted to the allegations.

Police recovered both the power bank and the sim card from Siro and Tumo.

[A copy of the record of Interview of Juvenile are attached].

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. In terms of the provisions of section 30(3) of the Juveniles Act a young person shall not be ordered to be imprisoned for more than 2 years.
6. The prosecutor in the written submissions filed for the hearing on sentencing and mitigation has conceded that there are no aggravating factors in this case.
7. On the face of it, one would think that the fact that you with two others had stolen property from a school compound should be considered as an aggravating factor. This was my initial impression as well.
8. However, the fact that the three of you had only stolen the sim card leaving the phone and the charger made me reevaluate the facts of this case. The three of

you were at the school compound with others to cut grass. So you did not enter the school compound as trespassers or with the intention to steal. (However, you agree that you entered into the library where you stole the sim card and then the staffroom where you stole the power bank with the intention of stealing and without permission.) Therefore I would agree with the prosecutor that there are no aggravating factors in this case.

9. Given the items stolen and the circumstances of the offending, it is manifestly clear that your conduct is opportunistic. Moreover, when your age is also taken into account along with my observation of you when you appeared in court for this case, I would view your conduct as one which is more of a mischievous nature though the said conduct satisfies the elements of the offences you have been found guilty of. I noted that you have submitted in your mitigation that you did not comprehend the gravity of your action. I have decided to accept that.
10. You are 17 years old. You are currently a year 10 student.
11. I find that there are strong mitigating factors in this case. They are;
 - a) You have pleaded guilty on the earliest opportunity.
 - b) You have cooperated with the police;
 - c) The two stolen items were recovered; and
 - d) Your parents have taken steps to present a traditional apology for the teachers who are the owners of the property you have stolen and the said teachers and the principal of the school have accepted the apology. They have forgiven you.
12. In dealing with this case, I consider it pertinent to remind myself of the rules Sir Matthew Hale came up in 1660 for Judges which are produced below. Sir Matthew Hale became the Lord Chief Justice of the court of King's Bench in 1671. His Lordship formulated 18 rules to guide his own conduct as a judge and the rules that I consider relevant in this case are the ones provided below;

13. *If in criminals it be a measuring cast, to incline to mercy and acquittal.*

14. *In criminals that consist merely in words, when no more harm ensues, moderation is no injustice.*

15. *In criminals of blood, if the fact be evident, severity in justice.*


13. All in all, I would consider it appropriate to be lenient on you. I am mindful that you have been in custody for 2 weeks in view of this case.

14. Accordingly, having considered the options under section 32(1) of the Juveniles Act, I have decided to order your parent/ guardian to pay a fine in terms of section 32(1)(c) of the said Act as the punishment in this case. I hereby order your parent/ guardian to pay a fine of \$50. This fine should be paid on or before 02/07/19.

15. The principal of the school at which the offences were committed has specifically stated in his letter that the school has decided to forgive you so that you will be allowed to prove your worth. I hereby advise you to remember that for the rest of your life. You are given this opportunity so that you will be able to prove your worth and to become a responsible and a law abiding citizen of this country. You are obliged to do that.

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




Vinsent S. Perera
JUDGE

Solicitors:

Office of the Director of Public Prosecutions for the State
Legal Aid Commission for the juvenile