

IN THE HIGH COURT OF FIJI AT SUVA

CASE NO: HAC. 30 of 2019

[CRIMINAL JURISDICTION]

STATE

V

1. SIRO LESUNAVANUA

2. MOSESE VOLAVOLA

Counsel : Ms. U. Tamanikaiyaroi for the State
Ms. L. David for both accused

Date of Sentence : 18 June 2019

SENTENCE

1. Siro Lesunavanua and Mosese Volavola, you have pleaded guilty to the charges produced below and were convicted 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

SIRO LESUNAVANUA AND MOSESE VOLAVOLA with another 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

SIRO LESUNAVANUA AND MOSESE VOLAVOLA with another 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

SIRO LESUNAVANUA AND MOSESE VOLAVOLA with another 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;

Accused 1 (A1)

- **SIRO LESUNAVANUA** – 19 years of age, Student of Nawaisomo village.

Accused 2 (A2)

- **MOSESE VOLAVOLA** – 20 years of age 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 A1, A2 and V (juvenile offender).

At around 12pm A1, A2 and V 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, A2 entered the library with V without permission whilst A1 waited outside. Upon entering the library A2 removed a sim card from the complainant's phone which was charging. A2 and V then exited the library and went to the school grounds. Later on the same day A1, A2 and V 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 A1 and A2 were arrested and taken in by police for questioning. Upon being questioned by police the both A1 and A2 admitted to the allegations.

Police recovered both the power bank and the sim card from A1 and A2.

[A copy of the record of Interview of both A1 and A2 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. 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.

6. On the face of it, one would think that the fact that the two of you with another had stolen property from a school compound should be considered as an aggravating factor. This was my initial impression as well.
7. However, the fact that the three of you had only stolen the sim card leaving the phone and the charger made me relook at the facts of this case. The three of you were at the school compound with others at the material time to cut grass. So you did not enter the school compound as trespassers or with the intention to steal. (However, when I inquired, you agreed 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.)
8. 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 respective ages are also taken into account with my observation of the two 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 convicted of.
10. I have noted that both of you have submitted in mitigation that you did not comprehend the gravity of your actions at the time and I have decided to accept that.
11. Siro Lesunavanua, you are 20 years old and you were 19 years old at the time of offending. You are currently pursuing studies at the Fiji National University.
12. Mosese Volavola, you are 19 years old and you were 18 years old at the time of offending. At that time you were attending a vocational program in a secondary

school. You have played rugby for your school and intend to pursue in that line. In your submission on mitigation you have attached a reference letter from vice principal of the school you attended in 2017 and 2018. The said letter highlights your contribution to the school in sports. It is stated that you have won the gold medal for senior boys' javelin in 2017 and in 2018 and that you have played rugby for the school. You have been awarded the sportsman of the year price of your school in 2018.

13. I find that there are strong mitigating factors in this case. They are;
 - a) The two of you have pleaded guilty on the earliest opportunity;
 - b) You are first offenders;
 - c) You have cooperated with the police;
 - d) The two stolen items were recovered; and
 - e) 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.

14. I am mindful of the fact that each one of you have been in custody for 03 weeks in view of this matter.

15. 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.

16. All in all, I would consider it appropriate to be lenient on the two of you so that you are given a second chance.
17. I direct myself in accordance with the provisions of section 16(1) of the Sentencing and Penalties Act produced below;
In exercising its discretion whether or not to record a conviction, a court shall have regard to all the circumstances of the case, including –
 - (a) the nature of the offence;*
 - (b) the character and past history of the offender; and*
 - (c) the impact of a conviction on the offender's economic or social well-being, and on his or her employment prospects.*
18. Taking into account the nature and the circumstances of the offending and the fact that each one of you are young first offenders with a bright future ahead of you, and then having those circumstances weighed against the impact of a conviction on your well-being and the future employment prospects, I have decided not to record a conviction but only a finding of not guilty in relation to each count and order a fine against each of you in terms of section 15(1)(f) of the Sentencing and Penalties Act.
19. I would therefore retract the convictions entered against each of you on 04/06/19.
20. I hereby order each one of you to pay a fine of \$50. This fine should be paid on or before 02/07/19.
21. The principal of the school where 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 each one of 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 responsible and law abiding citizens of this country. You are obliged to do that.

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




Vincent S. Perera
JUDGE

Solicitors;

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