IN THE HIGH COURT OF FIJI AT SUVA

CASE NO: HAC. 111 of 2019

[CRIMINAL JURISDICTION]

STATE

V

JONE CAMA

Counsel **:** Mr. Z. Zunaid for the State

: Ms. N. Mishra for the Accused

Sentenced on **:** 14 October 2019

SENTENCE

1. Jone Cama, you stand convicted of the following offences upon pleading guilty to same;

COUNT 1

Statement of Offence

Aggravated Burglary: contrary to Section 313 (1) of the Crimes Act, 2009.

Particulars of Offence

JONE CAMA & SETOKI GALUVAKADUA in the company of each other, on the 6th day of March 2019 at Suva in the Central Division, entered into the property of **FIJI BUREAU OF STATISTICS,** as trespassers with intent to commit theft.

COUNT 2

Statement of Offence

Theft: contrary to Section 291 (1) of the Crimes Act, 2009.

Particulars of Offence

JONE CAMA & SETOKI GALUVAKADUA in the company of each other, on the 6th day of March 2019 at Suva in the Central Division, dishonestly appropriated 1x pair of Nike canvas, 1x Nike bag, 1x electronic dictionary, 1x HP laptop with charger, the properties of **MELI NADAKUCA** with the intention of permanently depriving **MELI NADAKUCA** of the said properties.

COUNT 3

Statement of Offence

Theft: contrary to Section 291 (1) of the Crimes Act, 2009.

Particulars of Offence

JONE CAMA & SETOKI GALUVAKADUA in the company of each other, on the 6th day of March 2019 at Suva in the Central Division, dishonestly appropriated 1x HP laptop and 1x pair of Puma canvas, the properties of **VACISEVA DRAVI** with the intention of permanently depriving **VACISEVA DRAVI** of the said properties.

COUNT 4

Statement of Offence

Theft: contrary to Section 291 (1) of the Crimes Act, 2009.

Particulars of Offence

JONE CAMA & SETOKI GALUVAKADUA in the company of each other, on the 6th day of March 2019 at Suva in the Central Division, dishonestly appropriated 1x Dell laptop, the property of **SALANIETA TUBUDUADUA** with the intention of permanently depriving **SALANIETA TUBUDUADUA** of the said property.

COUNT 5

Statement of Offence

Theft: contrary to Section 291 (1) of the Crimes Act, 2009.

Particulars of Offence

JONE CAMA & SETOKI GALUVAKADUA in the company of each other, on the 6th day of March 2019 at Suva in the Central Division, dishonestly appropriated 1x Rip Curl Cap, the property of **JOSESE RAGIGIA** with the intention of permanently depriving **JOSESE RAGIGIA** of the said property.

COUNT 6

Statement of Offence

Theft: contrary to Section 291 (1) of the Crimes Act, 2009.

Particulars of Offence

JONE CAMA & SETOKI GALUVAKADUA in the company of each other, on the 6th day of March 2019 at Suva in the Central Division, dishonestly appropriated 1x Sony Camera, 1x pair of Reebok canvas,

1x CCC jacket, 1x carton of Rewa powdered milk, assorted food items and $100.00 cash the properties of **FILOMENA BROWNE** with the intention of permanently depriving **FILIMENA BROWNE** of the said properties.

COUNT 7

Statement of Offence

Theft: contrary to Section 291 (1) of the Crimes Act, 2009.

Particulars of Offence

JONE CAMA & SETOKI GALUVAKADUA in the company of each other, on the 6th day of March 2019 at Suva in the Central Division, dishonestly appropriated 1x Kenwin radio and 1x torch, the properties of **NIRAJ CHANDRA** with the intention of permanently depriving **NIRAJ CHANDRA** of the said properties.

COUNT 8

Statement of Offence

Theft: contrary to Section 291 (1) of the Crimes Act, 2009.

Particulars of Offence

JONE CAMA & SETOKI GALUVAKADUA in the company of each other, on the 6th day of March 2019 at Suva in the Central Division, dishonestly appropriated 1x Dell laptop, the property of **POASA NAIMILA** with the intention of permanently depriving **POASA NAIMILA** of the said property.

2. You have admitted the following summary of facts;

Accused [A1]

A1 in this matter is one, Jone Cama, 24 years old, Unemployed, of Omkar Road, Narere.

Complainant [PW1]

The complainant in this matter is one, Meli Nadakuca, 28 years old, Bureau of Statistics, of Waila Housing.

Prosecution Witness 2 [PW2]:

PW2 in this matter is one, Vaciseva Dravi, 26 years old, Bureau of Statistics, of Tuirara, Makoi.

Prosecution Witness 3 [PW3]:

PW3 in this matter is one, Salanieta Tubuduadua, 31 years old, Statistician at the Bureau of Statistics, of Bureni settlement, Naitasiri.

Prosecution Witness 4 [PW4]:

PW4 in this matter is one, Josese Ragigia, Age not stated, Bureau of Statistics, of Raiwaqa Police Station Barracks.

Prosecution Witness 5 [PW5]:
PW5 in this matter is one, Filomena Browne, Age not stated, Chief Admin Officer at Bureau of Statistics, of Lot 2 Davuilevu Agriculture, 10 miles.

Prosecution Witness 6 [PW6]:
PW6 in this matter is one, Niraj Chandra, Age not stated, Clerical Officer at the Bureau of Statistics, of Wainibokasi, Nausori.

Prosecution Witness 7 [PW7]:
PW7 in this matter is one, Poasa Naimila, Age not stated, Assistant Statistisian at the Bureau of Statistics, of Vuci South Road, Nausori.

Prosecution Witness 8 [PW8]:
PW8 in this matter is one, D/Sgt Tabalalai Salacieli, 31 years old, Police Officer, of Lami.

Prosecution Witness 9 [PW9]:
PW9 in this matter is one, Isireli Vulawalu, 41 years old, Police Officer of Delanivesi.

Prosecution Witness 10 [PW10]:
PW10 in this matter is one, Oliver Garnatt, 50 years old, Retired, of Suva.

Prosecution Witness 11 [PW11]:
PW11 in this matter is one, Gerard Mudliar, 34 years old, Self-employed, of 92 Princess Road.

Prosecution Witness 12 [PW12]:
PW12 in this matter is one, Azel Raj, 28 years old, Businessman, of Lot 27 Ratu Mara Road.

Prosecution Witness 13 [PW13]: Arresting Officer for Jone Cama
PW13 in this matter is one, DC 5246 Romulo, 27 years old, Police officer, of 27 Grenne Street, Howell Road.

Prosecution Witness 14 [PW14]: Investigating Officer & Caution Interviewed Jone Cama
PW14 in this matter is one, DC 5298 Peni Tikoinaka, 25 years old, Police officer, of Lot 28 Nairaai Road.

Prosecution Witness 15 [PW15]: Charging Officer for Jone Cama
PW15 in this matter is one, PC 4918 Jone, Age not stated, Police Officer, of Kelland Street, Suva.

Prosecution Witness 16 [PW16]: Witnessing Officer for Jone Cama
PW19 in this matter is one, DC 3606 Naca, Police officer.

Prosecution Witness 17 [PW17]: Identified Jone Cama on CCTV footage
PW20 in this matter is one, DC 3090 Akuila Debalevu, 38 years old, Police officer, of Valelevu.

Brief Facts:

1) *The accused person is charged with another and he has voluntarily pleaded guilty to one count of Aggravated Burglary, contrary to Section 313 (1) (a) of the Crimes Act 2009 and 7 counts of Theft, contrary to section (1) of the Crimes Act 2009.*
2) *On the 6th March 2019 between 12am – 4am, the accused person and his accomplice in the company of each other entered into the Fiji Bureau of Statistics (FBS) office at Sukuna House, Suva and dishonestly, appropriated a number of items.*
3) *To simplify this, a tabular form is created on the next page to illustrate what items were dishonestly appropriated, from whom were they dishonestly appropriated in the premises of FBS and what items were recovered.*

Prosecution Witness	*Items Stolen from FBS*	*Items Recovered*
Meli Nadakuca	*1x Pair of Nike canvas (blue & yellow in colour), 1 x Nike Bag, 1x Electronic dictionary, 1x HP Laptop (grey in colour) with charger*	*1x Nike Bag*
Vaciseva Dravi	*1x HP Laptop (Black in colour), 1x Pair of Puma canvas (Black & pink in colour).*	*1x HP Laptop (black in colour).*
Salanieta Tubuduadua	*1x Dell Laptop (black in colour).*	*1x Dell Laptop (black in colour).*
Josese Ragigia	*1x Rip Curl Cap*	*-*
Filomena Browne	*1x Sony Camera (black in colour), 1x Pair of Reebok canvas, 1x CCC Jacket (black in colour), 1x Carton of Rewa Powdered Milk (24 packets) and $100.00 cash.*	*1x Pair of Reebok canvas.*
Niraj Chandra	*1x Kenwin Radio (black in colour), 1x torch (Yellow in colour).*	*-*
Poasa Nimila	*1x Dell Laptop.*	*-*

4) *In addition to the above items recovered as tabulated above, another HP Laptop belonging to the Fiji Bureau of Statistics was also recovered from PW11.*
5) *A CCTV footage was uplifted from the crime scene by police in which PW17 identified the accused person as one of the persons who had committed the alleged offence.*
6) *On the 7th of March 2019, at around 3pm, PW8 received information that PW10 had bought 3 laptop's from the accused person. PW8 then left with a team of police officers to conduct a search at PW10's residence. PW10 in his statement stated that the accused whom he also knew as "Small Dee" came with another i-Taukei youth to sell him four laptops.*
7) *PW10 then called PW11 and asked if he was interested in buying the laptops.*

PW10 then went to PW11's house with the four laptops. From there, PW10 and PW11 then went to PW12's house to sell PW12 the laptops.

8) *PW12 bought two of the laptops whilst PW11 kept one of the laptops. The fourth laptops was not recovered.*
9) *Police officers upon receiving information from PW10 then made their way to PW11's residence whereby PW9 then seized 1x HP Laptop from PW11.*
10) *Police officers upon receiving information from PW11 then made their way to PW12's residence whereby PW12 voluntarily handed over 1x Dell Laptop (black in colour) and 1x HP Laptop (black in colour) with both chargers.*
11) *On the 7th of March 2019, PW13 arrested the accused. The accused was then caution interviewed and charged. The accused person did not make any admissions in his record of interview as he chose to answer in court.*

3. 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. [See ***State v Prasad*** [2017] FJHC 761; HAC254.2016 (12 October 2017) and ***State v Naulu*** [2018] FJHC 548 (25 June 2018)]

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 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 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. On the face of it, the value of the property stolen in this case could have been regarded as an aggravating factor in this case. But the summary of facts or the particulars of offence in the theft charges in this case does not disclose the value of the items stolen. It is the present practice of the Director of the Public Prosecutions

not to include the value of the stolen items in theft charges and it appears that this practice has led the prosecutors to completely ignore the value of the property stolen in cases involving theft charges.

7. The prosecution in the sentencing written submission has submitted that pre-meditation, disregard of property rights and the fact that some of the stolen items were not recovered should be considered as aggravating factors in this case. However, the summary of facts does not reveal that there was preplanning. Burglary is an offence against property. Therefore, the disregard of property rights by the accused is invariably reflected in the sentencing tariff for burglary. Even though the full recovery of the stolen items due to the cooperation of the accused during the investigation could be regarded as a mitigating factor, the fact that there was no recovery cannot be considered as an aggravating factor to increase the sentence.

8. According to the summary of facts, a laptop that belongs to the Fiji bureau of Statistics has been recovered from one of the witnesses (PW11). However, this laptop does not seem to be included in any one of the theft charges as a property stolen by the accused. In fact, there is a high likelihood for most of the property stolen to be property that belongs to the Fiji Bureau of statistics and therefore public property, though they were issued to the employees who are named as the victims in the theft charges. Moreover, the laptops that were stolen may have contained sensitive information. Therefore, it seems that the true seriousness of the offence is not properly and correctly reflected in the summary of facts. Needless to say, I would fall into error if I am to assume the above and regard the aforesaid as aggravating factors in this case.

9. However, I will be failing in my duty if I do not consider the number and the nature of the items stolen as reflected in the charges and in the summary of facts and the fact that you broke into a government institution, as aggravating factors in this case.

10. You are not a first offender. The previous conviction report filed initially by the prosecution includes 14 previous convictions. Subsequently, the prosecution has taken steps to amend the said report and has filed a report which includes only 04 convictions saying that the convictions for the offences you had committed as a juvenile were removed.

11. Your counsel submits that the fact that some of the stolen items have been recovered should be considered as a mitigating factor. However, those items were not recovered as a result of you cooperating with the police.

12. All in all, the only mitigating factor in this case is the fact that you have pleaded guilty to the charges. I am mindful of the fact that you did not plead guilty to the charges at the first opportunity.

13. You are 24 years old. It is submitted that you live with your mother and you are unemployed. You are said to be the youngest out of four children. It is submitted by your counsel that your father is a farmer at Taveuni and your brother is a serving prisoner. You have studied up to form 4.

14. I would select 06 years as the starting point of your aggregate sentence. I would add 02 years in view of the aforementioned aggravating factors. Now your sentence is an imprisonment term of 08 years.

15. In view of your guilty plea, I would grant you a discount of one-fourth. Accordingly, the final sentence is an imprisonment term of 06 years.

16. The young first offenders who commits the offence of aggravated burglary and pleads guilty at the first instance are usually given substantial discounts where the final term of imprisonment reached in most of such cases had usually been a term below 03 years. In your case, you are not a young offender and also not a first offender.

17. You appear to be a person who had misused the leniency in sentencing provided by law for juvenile offenders and had continued to indulge yourself in committing crimes. The Juveniles Act provides for a lenient approach in sentencing under section 30 of the said Act in order to provide an opportunity for juvenile offenders to rehabilitate themselves but not to make use of the said leniency to commit more and more offences. Had you committed those offences listed in the initial previous conviction report filed by the prosecution as offences committed being a juvenile, not as juvenile but as an adult, I would have declared you as a habitual offender and you would have received a much higher sentence.

18. Having considered all the circumstances in this case, especially the fact that you have pleaded guilty to the charges and your personal circumstances, I would consider it appropriate to fix two-thirds of your final term of imprisonment as your non-parole term. This is done in order for your 'effective sentence' (imprisonment term that a prisoner is to serve, after taking remission into account) to be the same as the non-parole period if you maintain good behavior inside the prison. This will enable you, after serving two-thirds of your term of imprisonment, either to be discharged based on remission in terms of section 48 of the Prisons and Corrections Act if a parole board is not constituted by that time, or be eligible to be considered by the parole board to be released on parole if the said board is constituted. Accordingly, I would fix your non-parole period at 04 years.

19. The counsel for the defence has made extensive submissions on the issue of fixing a non-parole period stemming from the judgment in the case of ***Timo v State*** CAV0022.2018 (21 August 2019). The counsel for the defence points out that the conclusion of Lokur J in ***Timo*** (supra) that the judiciary should only fix a non-parole period in exceptional cases and where absolutely necessary, is a deviation from the provisions of section 18(1) of the Sentencing and Penalties Act as the word "must" in the said section, given its ordinary meaning, imposes a mandatory requirement on the Courts to impose a non-parole period when sentencing an offender for life or for a term of two years or more. I couldn't agree more.

20. The defence counsel relies on the following dictum in the case of ***Nokes v Doncaster Amalgamated Collieries Ltd.*** [1940] 3 All ER 549 on interpretation of statutes;

> *"The principles of construction which apply in interpreting such a section are well-established. The difficulty is to adapt well-established principles to a particular case of difficulty.* ***The golden rule is that the words of a statute must prima facie be given their ordinary meaning****. We must not shrink from an interpretation which will reverse the previous law, for the purpose of a large part of our statute law is to make lawful that which would not be lawful without the statute, or, conversely, to prohibit results which would otherwise follow. Judges are not called upon to apply their opinions of sound policy so as to modify the plain meaning of statutory words, but, where, in construing general words the meaning of which is not entirely plain, there are adequate reasons for doubting whether the legislature could have been intending so wide an interpretation as would disregard fundamental principles, then we may be justified in adopting a narrower construction.* ***At the same time, if the choice is between two interpretations the narrower of which would fail to achieve the manifest purpose of the legislation, we should avoid a construction which would reduce the legislation to futility, and should rather accept the bolder construction, based on the view that Parliament would legislate only for the purpose of bringing about an effective result****.*
> [Emphasis added]

21. In ***Timo*** (supra) Lokur J has taken up the position that the fixing of a non-parole period by the court amounts to 'encroaching or subverting the discretionary power given by law to the Parole Board and the Minister'. Lokur J also says that '[t]here may well be an extraordinary case in which the Parole Board and the Minister are of opinion that the convict is deserving of parole, but there hands would be tied because of an order of the Court fixing a non-parole period'.

22. Would this mean that the lawmakers who decided to give the power to the courts of law to hear cases and impose punishments stipulated by them (lawmakers), also intended to grant the power to a (parole) board and the relevant minister to override the outcome of the decisions taken by the courts of law regarding the punishments to be imposed, by way of the provisions relating to parole? For an example, would it mean that, in a case where a court imposes an imprisonment of 15 years against an offender who had raped a child, the parole board and the relevant minister can release that offender on parole, on the very next day after the offender was sentenced because they are of the opinion that the relevant convict deserves to be released on parole from the very next day? If the answer to the

above question is to be construed as a 'yes', then can one expect the penal law of this country to bring about an effective result?

23. In my reading, the answer to the aforementioned (former) question should be in the negative. Moreover, in my view, the law in Fiji relating to parole does not have a conflict with the power vested with the judiciary to impose a sentence according to law. The provisions relating to parole does not either expressly or impliedly grant the power on the parole board or the relevant minister to release every offender who is sentenced to a term of imprisonment, on parole. In my considered view, the parole board and the minister responsible for the relevant subject assumes the power to grant parole over an offender only when the court fixes a non-parole period in terms of section 18(1) of the Sentencing and Penalties Act. That is why, on a plain reading, the said section provides that a court must fix a non-parole term when imposing an imprisonment term for life or for a period of two years or more; so that the parole board is allowed to come in upon the expiry of the non-parole period so fixed by the court. The non-parole board cannot interfere with the sentence when a court '**declines**' to fix a non-parole term where the court had considered it inappropriate to fix a non-parole term given the nature of the offence or the past history of the offender. [***State v Bulavou*** [2019] FJHC 877; HAC28.2018 (10 September 2019)]

24. The provisions of section 19(1)(a) of the 2013 Constitution which deals with the right to personal liberty recognises the power vested in courts of law to deprive the liberty of an offender in imposing a sentence against that person. The said section reads thus;

> *Right to personal liberty*
>
> *9.— (1) A person must not be deprived of personal liberty except—*
>
> *(a) for the purpose of executing the sentence or order of a court, whether handed down or made in Fiji or elsewhere, in respect of an offence of which the person had been convicted;*

25. If the courts do not have the power to deprive the personal liberty of an offender when imposing the relevant sentence or order, no person or entity can be vested with the power to execute that sentence or the order which has the effect of depriving personal liberty.

26. On the other hand, one can argue that a person who commits an offence impliedly waives his/ her right to personal liberty. Let's take the offence of rape. The Crimes Act clearly provides that the punishment for rape is imprisonment for life and ignorance of law is not an excuse (*Ignorantia juris non excusat*). Therefore, when a person commits the offence of rape, he ought to know that he is committing an offence and that he is liable to be imprisoned for life by committing that offence. Hence, when the court sentences that person to be imprisoned for a particular period, that person cannot subsequently make a claim on the right to personal liberty during the operation of the said term of imprisonment. The parole board and the relevant minister responsible can consider releasing the said offender on parole before the completion of the term of imprisonment, but only if the sentencing court has fixed a non-parole period in terms of section 18(1) of the Sentencing and Penalties Act and accordingly, after the expiry of that non-parole period. When a court declines to fix a non-parole term, that should mean that the court does not consider it appropriate for the relevant offender to be released early either on parole or on remission.

27. Therefore there is a strong foundation to support the proposition that the provisions of section 18(1) of the Sentencing and Penalties Act should be construed as provisions that gives the jurisdiction to the parole board and the relevant minister over a particular offender to release that offender on parole and not as provisions that restrains the powers vested by law on the parole board and the relevant minister. No conflict between the judicial power and the executive power would arise or be perceived if the said provisions are read in the above manner. A conflict is perceived only if the relevant provisions are construed otherwise.

28. Furthermore, the way I see it, the misconstruction of the provisions of section 18(1) and 18(2) of the Sentencing and Penalties Act stems from the standpoint that the fixing of a non-parole period is unfavourable to an offender and that declining to fix a non-parole period is favourable. Though the position that the non-fixing of a non-parole period would work in favour of an offender may make sense as far as the provisions of the aforementioned section 18(2) are concerned, it is pertinent to note that there are other provisions that deal with non-parole, namely sections 19,

20 and 21 of the Sentencing and Penalties Act and the question is whether the said position can be reconciled with the provisions of the said section 19, section 20 and section 21. As it could be clearly noted from the discussion below, the position that is congruent with all the provisions relating to non-parole in the Sentencing and Penalties Act is that, declining to fix a non-parole period is unfavourable to the offender as pointed out in ***Bulavou*** (supra) and in ***Matoga v State*** [2019] FJHC 965; HAA05.2019 (4 October 2019).

29. Section 19 of the Sentencing and Penalties Act reads thus;

> *Fixing non-parole period by appeal courts*
>
> *19.— (1) The failure of the sentencing court to fix a non-parole period under section 18 does not invalidate the sentence but any court hearing an appeal against the sentence may fix a non-parole period in accordance with section 18.*

30. First, it would be pertinent to ponder upon the reason why the provisions alluded to above refers to the non-fixing of a non-parole period as a failure. If the legislature intended a non-parole period to be fixed in exceptional cases why would the non-fixing of a non-parole period be termed as a failure? Secondly, if fixing of a non-parole period was intended to be unfavourable or detrimental to the offender, would the lawmakers legislate the above provisions in such a way giving the discretion to the appellate court to fix a non-parole period when no non-parole period was fixed by the lower court? Thirdly, it should be noted that when taken in its entirety, the language used in section 19(1) above makes it plain that it is mandatory for the sentencing court to fix a non-parole period in terms of section 18 of the Sentencing and Penalties Act.

31. Section 19(2) of the Sentencing and Penalties Act provides thus;

> *(2) The High Court may, on the application of the offender, fix a non-parole period in accordance with section 18 in respect of a term of imprisonment being served by a person who is serving a life sentence and in respect of which no non-parole period has been fixed.*

32. If the fixing of a non-parole period is intended to be unfavourable to an offender as far as an early release is concerned and the non-fixing favourable, then why

would section 19(2) above provide that an offender who is sentenced to life where no non-parole period has been fixed can make an application to High Court, for the High Court to fix a non-parole period? Isn't the position that the fixing of a non-parole period is favourable to an offender further supported by the provisions above? On the other hand, if the lawmakers intended the parole board and the relevant minister to have the power to release an offender on parole at any time at their discretion when a court does not fix a non-parole period in relation to the relevant term of imprisonment, why would this section provide for an offender to make an application for a non-parole period to be fixed when no non-parole period has been fixed initially? Doesn't these provisions support the contention that the parole board assumes jurisdiction over an offender only when the court fixes a non-parole term?

33. The next section relevant to fixing of a non-parole term is section 20 of the Sentencing and Penalties Act. This section provides that a court when sentencing an offender to a term of imprisonment who is already sentenced to a term of imprisonment with a non-parole period and where the said non-parole period is not yet expired; the court must fix a non-parole period in respect of all the sentences the offender is to serve or complete from the date of the new sentence which is imposed. The provisions of section 20(1) and section 20(2) again highlights the necessity to fix a non-parole term. However, what is more relevant to this discussion is the provisions of section 20(3) which suggests that a court should decline to fix a non-parole period in exceptional circumstances. The said section reads thus;

> *(3) Nothing in this section prevent a court from* ***exercising its power under section 18(2) to decline*** *the fixing of a non-parole period in relation to the subsequent sentence.*
> [Emphasis added]

34. Section 21 of the Sentencing and Penalties Act provides the order the sentences should be served when an offender has to serve multiple sentences, where a non-parole period is fixed for some terms of imprisonment but not fixed in relation to one or more of those sentences. Section 21(1) reads thus;

Order of service of sentences

21. *(1) If an offender has been sentenced to several terms of imprisonment in respect of any of which a non-parole period was fixed, the offender must serve –*

(a) firstly, any term or terms in respect of which a non-parole period was not fixed;

(b) secondly, the non-parole period;

(c) thirdly, unless and until released on parole, the balance of the term or terms after the end of the non-parole period.

35. The fact that the term or terms in respect of which a non-parole period is not fixed should be served first further supports that, when a court declines to fix a non-parole period in relation to a term of imprisonment, the offender should serve the full term of imprisonment so imposed by the court.

36. According to the canons of interpretation, where a word in a particular section of a statute is ambiguous, its meaning may be determined by reference to the rest of the statute. In the same manner a particular section of a statute cannot be read in isolation. A section should be construed in the spirit of the entire statute; by referring to the entire statute.

37. In the light of the foregoing discussion, considering the provisions of sections 19, 20 and 21 along with that of section 18 of the Sentencing and Penalties Act (in addition to the reasons discussed in ***Bulavou*** (supra) and in ***Matoga*** (supra)), it is manifestly clear that;

a) it is mandatory for a sentencing court to fix a non-parole term when imposing an imprisonment term for life or for 02 years or more unless the court considers it inappropriate to do so given the nature of the offence or the past history of the offender;

b) fixing of a non-parole period is favourable to an offender and the non-fixing of a non-parole period is unfavourable as far as early release is concerned where it could be discerned that an offender should serve the full term of imprisonment if the court declines to fix a non-parole period in relation to that term of imprisonment; and

c) the parole board assumes jurisdiction over an offender only if the court fixes a non-parole period and upon the expiry of that (non-parole) period.

38. Now I would return to the case at hand. It is submitted that you have been arrested in view of this matter on 07/03/19. Accordingly, you have spent 07 months and 07 days in custody in view of this matter. The time you have spent in custody shall be regarded as a period of imprisonment already served by you in terms of section 24 of the Sentencing and Penalties Act.

39. In the result you are sentenced to an imprisonment term of 06 years with a non-parole period of 04 years. Given the time spent in custody, the time remaining to be served is;

Head Sentence – 05 years; 04 months; and 23 days
Non-parole Period – 03 years; 04 months; and 23 days

40. 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 Accused