

IN THE HIGH COURT OF FIJI

AT SUVA

[CRIMINAL JURISDICTION]

CRIMINAL CASE NO: HAC 416 of 2018

STATE

V

1. MAIKELI TURAGAKULA

2. JONE DELANA

Counsel : Ms. Bhavna Kantharia for the State
Mr. Krisheel Chang for the 1st Accused
Ms. Lavinia David for the 2nd Accused

Sentence Hearing : 16 October 2019

Sentence : 19 February 2020

SENTENCE

[1] Maikeli Turagakula and Jone Delana, as per the Information filed by the Director of Public Prosecutions (DPP), you were charged, with the following offences:

COUNT 1

Statement of Offence

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

Particulars of Offence

MAIKELI TURAGAKULA and **JONE DELANA**, on the 25th day of October 2018, at Pacific Harbour, Navua in the Central Division, entered into the villa of **FONG WE CHING** as trespassers, with intent to commit theft therein.

COUNT 2

Statement of Offence

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

Particulars of Offence

MAIKELI TURAGAKULA and **JONE DELANA**, on 25th day of October 2018, at Pacific Harbour, Navua in the Central Division, dishonestly appropriated 1 x 65 inch TCL TV, 2 x Muzio brand speakers, 2 x Muzio microphone, 1 x marble brand electric power board, 1 x Muzio brand wireless microphone receiver, the property of **FONG WE CHING** with intention of permanently depriving **FONG WE CHING** of his properties.

COUNT 3

Statement of Offence

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

Particulars of Offence

MAIKELI TURAGAKULA and **JONE DELANA**, on the 26th day of October 2018, at Pacific Harbour, Navua in the Central Division, entered into the villa of **FONG WE CHING** as trespassers, with intent to commit theft therein.

COUNT 4

Statement of Offence

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

Particulars of Offence

MAIKELI TURAGAKULA and **JONE DELANA**, on 26th day of October 2018, at Pacific Harbour, Navua in the Central Division, dishonestly appropriated 1 x 46 inch Samsung brand TV, the property of **FONG WE CHING** with the intention of permanently depriving **FONG WE CHING** of his properties.

- [2] On 3 December 2018, the DPP filed the Disclosures relevant to the case; while on 23 January 2019, the Information was filed.
- [3] On 8 March 2019, you were both ready to take your pleas. You pleaded guilty to the four counts in the Information. This Court was satisfied that you pleaded guilty on your own free will and free from any influence. Court found that you fully understood the nature of the charges against you and the consequences of your plea.

[4] Thereafter, on 25 March 2019, the State filed the Summary of Facts. However, on 10 June 2019, the Summary of Facts were re-filed by the State. On 19 June 2019, the Summary of Facts were read out and explained to you and you understood and agreed to the same. Accordingly, Court found your guilty pleas to be unequivocal. I found that the facts support all elements of the four counts in the Information, and found the four counts proved on the Summary of Facts agreed by you. Accordingly, I found you both guilty on your own pleas and I convicted you of the four counts as charged.

[5] Maikeli Turagakula and Jone Delana, up to this point in time you both appeared in person, as you had waived your right to counsel. The Legal Aid Commission appeared on your behalf with effect from 4 September 2019.

[6] I now proceed to pass sentence on the two of you.

[7] The Summary of Facts filed by the State was as follows:

“1. The complainant in this matter is Fong We Ching hereinafter known as “PW1” of Hong Kong and owning a villa at Pacific Harbour, Navua.

2. The accused are:

i. Maikeli Turagakula hereinafter known as “A1”, 20 years old, Farmer of Vunibuabua, Lapanoni Settlement, Navua.

ii. Jone Delana hereinafter known as “A2” 21 years old, unemployed of Lapanoni Settlement, Navua.

3. There is no relationship between the accused’s and the complainant.

4. On 27 October, 2018 at around 1.30pm, PC 5130 Apenisa, police officer at Lami Police Station received information that some youths were seen trying to sell a flat screen TV at Kalekana Settlement, Lami.

5. PC 5130 Apenisa together with another police officer went to Kalekana settlement and saw a TV lying by the roadside.

6. The two police officers went to the closest house and enquired with a lady if she knew anything about the TV lying by the roadside and the lady requested to remain anonymous and informed that four youths came to her house earlier to ask her brother if he wanted to buy the flat screen TV.

7. The lady further informed the police that the four youths left their phone contact behind for her brother to contact them if he wanted to buy the flat screen TV.

8. *The police officer accompanying PC 5130 Apenisa then called on the phone contact and told the recipient of the phone that he was willing to buy the TV they were selling.*
9. *The person on the phone informed the police officer that they will come there soon.*
10. *Both the police officers waited there when after a while a blue taxi registration number, LT 382 came, the police officers looked inside and saw four I – Taukei youths seated inside.*
11. *The police officers then told the driver of the taxi to open the boot and found the TV wrapped in a tarpaulin inside the boot.*
12. *The Police officers then escorted the four youths namely Jacob Tabuarua, Maikeli Turaga, Sailosi Naikaso and Jone Delana to the Lami Police Station for questioning and then referred them to Navua Police Station of further investigation.*
13. *Chung Wah Song, 68 years old – caretaker of Villa 444 based at River Drive, Pacific Harbour stated that on 25/10/18 at about 1 pm, he took some people to show the villa as they wanted to rent the same. He stated that he remembers locking windows and door of the villa securely when leaving at around 3pm.*
14. *The caretaker further stated that on 27/10/18 at about 5pm he came with a friend namely Chiney to clean the villa and it is then that he discovered that the villa was broken into. He stated that he checked the villa and found the following items missing:*
 - I. *1 x 56'inch flat screen brand (TCL) black in color valued at \$3,000.00*
 - II. *1 x 46'inch flat screen TV brand (Samsung) black in color valued at \$1,200.00.*
 - III. *1 x mobile phone brand (Huawei P10) valued at \$1,500.00*
 - IV. *2 x speaker band (FIDCK) valued at \$600.00 each black in color.*

All stolen items are at a total of \$6,900.00 belonging to the owner Mr. Fong We Ching who is working in Hong Kong.
15. *The caretaker was shown the two flat screen televisions that were recovered by the Police and the caretaker positively identified the items belonging to Mr. Fong We Ching.*

16. *DC Mataiasi Rokobiti caution interviewed Maikeli Turagakula on 29/10/18. Maikeli Turagakula admitted to committing the offence with one Jone Delana on Thursday 25/10/18 and again on Friday 26/10/18.*
17. *DC 4230 Lasarusa Lala caution interviewed Jone Delana on 29/10/18 at the Navua Crime office. Jone Delana admitted to committing the offence with one Maikeli Turagakula on Thursday 25/10/18 and again on Friday 26/10/18.*
18. *DC 5107 Benidito Karekare formally charged Jone Delana on 29/10/18 for 2 counts of Aggravated Burglary and Theft.*
19. *DC 5167 Krishneel Chand on 29/10/18 formally charged Maikeli Turagakula for 2 counts of Aggravated Burglary and Theft.*
20. **Caution Interview of A1- Maikeli Turagakula**

A1 in his record of interview states that on Thursday 26/10/18 at about 3.00 p.m. he was at Lapanoni Village with A2 - Jone Delana and was planning to steal some items from Villa 44 (Q & Ans- 31 & 32).

A1 stated that it was his plan to steal as he used to run along the area where the Villa is located and has seen one window always open and knew no one was inside. (Q & Ans 33 and 34)

A1 stated that after planning they approached one Marika Tutu who resides at Khalsa Road, Valelevu and is working as a security at Damodar City for him to take them to Pacific Harbour to pick the wages from Villa there.

A1 stated that he knew Marika Tutu as his parents are staying at Lapanoni, Marika agreed to drive A1 and A2 in his car.

A1 stated that upon reaching Pacific Harbour he asked Marika to park the car in front and he climbed the gate whilst A2 stood inside the compound. A1 stated that he went inside through the window which was open (Q & A -54).

A1 stated that upon entering he saw things scattered inside and he lifted a big TV screen and opened the sliding window widely and gave it to A2 who was standing outside the house and he put it near the gate. (Q & A – 56)

A1 stated that he later passed a speaker through the same window to A2 and then came out and put the stuff inside the car and got inside the car and left from there (Q & A - 58 & 59).

A1 stated that they stopped at Fiji Fish opposite the Pacific cement factory to see one Saimoni who works there to check if he wants to buy the items.

Saimoni saw the stuff but he did not have money with him. But there was another security at his work place who wanted to buy the screen and he asked for the same to be switched on to check, it was then discovered that the screen was damaged. The security then told them to drop the speakers at his house at Kalekana. However, upon reaching there the security's wife refused to take the speakers.

Marika then told them that he will take the speakers given that he made the runs in the vehicle to various place with them.

A1 and A2 then threw the TV screen whilst at Kalekana on top of the hill since it was damaged – (Q & A – 63).

Marika then dropped A1 and A2 at Lapanoni and went back to Suva with his wife and also took the speakers with him.

A1 stated that then on 26/10/18-Friday he and A2 walked at about 8pm to the same villa and climbed the gate and went inside the house through the back door – (Q & A 67 -71).

A1 stated that he pulled one of the handles of the sliding door and it came out and he slide the door and it opened (Q & A -72).

A1 stated the he and A2 then both entered the villa and brought the TV screen and came out of the same door (Q & A 73 and 74).

A1 stated that after that they went straight to Lapanoni and they carried the TV screen, each taking a turn to carry the screen.

A1 stated that the route they took was to great Harbour drive and pass the bridge then crossing the bush and down section 1 and then went to Veejay store to the main road and back to Lapanoni.

From there he stated that they went to Sailosi's house where they woke him up and requested him to keep the screen so he kept it inside his bedroom and that they will pick the next day to take it to Suva.

The next morning on 27/10/18 at about 8am, they arranged a taxi that took them to Pacific Harbour and then they changed the taxi and travelled to Suva. A1 and A2 travelled in the taxi together with Sailosi, Jacob and Saimoni.

They all travelled to Kalekana and Saimoni started to look for the person to buy the screen and he met that person but he asked them to wait for his brother who did not turn up and then Saimoni gave his phone contact to one lady for the brother to contact and they left for Suva.

As they all were about to reach Suva, they received a call from the person to come back so they all returned to Kalekana and that is when the Police arrested them with the screen.

A1 with others were taken to Lami Police Station and questioned as to where the screen was from and they informed the Police that it was from Pacific Harbour. They were then referred to Navua Police.

A1 admitted to stealing all the items from the villa at Pacific Harbour.

Reconstruction of the crime scene was done and A1 showed the Police the villa he entered and stole the items.

Police recovered items from Marika which consists of 2 x Muzio brand mic, 1 x power board and 1 x wireless mic receiver. A1 was asked whether these were the items that were stolen by him from the villa and he stated yes (Q & A-97).

A1 was shown by Police TCL brand TV screen, Samsung brand TV, 2 x Muzio brand speakers 2 x Muzio brand Mics and 1 x Muzio brand wireless Mic receiver and asked whether those were the same items he stole from Villa 444 and he stated yes (Q & A -108 to 112 respectively)

A1 was asked whether he knew what he did was against the law and he stated yes (Q & A-113).

A1 was asked what was the reason of stealing those items and he stated that he was looking for money (Q & Ans -114).

21. Caution Interview of A2- Jone Delana

A2 stated that on the day of the alleged incident-25/10/18 he was at home at Lapanoni with him mum sometimes after lunch when A1 approached him for smoke.

Whilst they were smoking outside Mala's store A1 asked A2 to accompany him to one of the villa at Pacific Harbour.

A2 asked A1 what they were to do there and A1 stated that it was vacant villa and he already made arrangement with the transport for them to go and get some items from there- (Q & A 36).

They were still smoking when he saw a grey rental hybrid stopped in front of them which was driven by one Tutu also of Lapanoni and A1 told him to get in as that car was going to take them to the villa at Pacific Harbour.

They all went to Great Harbour Drive at Pacific Harbour up the very last villa towards Dakunikoro where A1 informed the driver to turn inside the driveway and stop on the gate.

A1 told them to wait at the car and he will go inside the villa. A2 stated that he jumped over the first gate and waited at the 2nd gate whilst the driver kept sitting on the driver's seat (Q & A -39).

A2 stated that he saw A1 jump through the second gate and walked in the compound but he did not see him after that and does not know how he entered the villa.

A2 stated that after half an hour of waiting he saw A1 come back to the gate with a big black flat screen and passed it over to him over the gate and he went back inside and he got 2 big black speakers and again passed it over to him. A1 then jumped out again over the gate and they both loaded all the items in the car (Q & A – 44).

A1 then told them that they were going to sell all those items in Suva so they proceeded towards Suva.

A2 stated that they stopped at Fiji Fish at Lami as they wanted to sell the big flat screen to the security officer however, upon checking noticed that it was damaged by the rough surface of the road whilst travelling as A2 sat on top of it in the rear compartment of the car (Q & A-50).

A2 stated that they took the screen to Kalekana and dumped it there (Q & A -51).

A2 stated that he was at home the next day 26/10/18 when he was approached again by A1 to accompany him to the same villa and get the other screen that was left inside (Q & A – 54).

A2 told him that he did not want to go as they might be caught. However, A2 again came begging him in the evening to accompany him to the villa and he agreed. (Q & A -56).

A2 stated that he and A1 left for the villa at Pacific Harbour around 8.00 to 9.00pm (Q & A 57).

He stated that they both walked to the villa. Upon reaching Pacific Harbour A1 told A2 to stand and watch on the gate while he again jumped over the gate and went inside the villa (Q & A -59).

A 1 then came out with a medium size screen black in colour (Q & A 60).

They both then walked through Great Harbour Drive before they reached the Multicultural school and then followed a cross cut which goes up to the Police Post carrying that screen along with them (Q & A 62).

A2 stated that upon reaching Lapanoni he left A1 in front of AOG Church and went straight home and slept.

Then on 27/10/18 A2 met A1 at the shop when he went to buy bread and informed him that he has arranged for one Sailosi to pay taxi fare for them to go and sell the screen somewhere in Suva.

On 27/10/18 they drove in a blue Fielder Taxi driven by one Laurence of Galoa and Sailosi was sitting in the front while Maikeli and Jacob and one Moni sat on the rear passenger's seat so A2 got in the boot of the tax and saw the black screen they had brought (Q & A 68).

Upon reaching Kalekana Moni asked for the taxi to go to one of the houses inside and he spoke to one person who then informed him to come later.

They all then left and went to Lami town and waited for the person to call and after 1 hour they received the call and they all returned to Kalekana and saw 2 Police officers both in uniform who approached them and informed them to get into the Police vehicle because of the stolen screen and were to be taken to the Lami Police Station (Q & A 73).

A2 admitted to being with A1 and having assisted A1 to steal the items from the villa at the Pacific Harbour on 2 separate occasions.

A2 was shown the big screen (56' TCL brand screen) and another screen (46' Samsung brand screen) and asked if he stole the same from that villa on 25/10/18 and 26/10/18 respectively and he stated yes (Q & A 75 & 76).

A2 was asked what he did with the 2 big speakers that were also stolen from the villa.

Ans: A2 stated that both speakers were given to Tutu on Thursday night as car fare (Q & A 77).

A2 was shown 2 Muzio Audio brand speakers and asked whether same were stolen from Villa 444, Great harbor Drive, Pacific Harbour.

Ans: Yes. (Q & A – 97).

A2 was further asked if there were any other items apart from the ones already mentioned brought from Villa 444 and he answered yes (Q & A - 98). And when asked to tell what those items were he stated:

Ans: 1 x blue colored Muzio brand wireless mic, 1 x orange color Muzio brand wireless mic, 1 x marble brand power board with USB port white in color and 1 x Muzio brand wireless mic receiver (Q & A -99).

A2 was asked when he bought those items and he stated on Thursday 25/10/18 with the TCL brand screen and 2 speakers (Q & A -100).

A2 was then shown all the items that he mentioned and asked if those were the items he brought with Maikeli on Thursday 25/10/18 with the TCL brand screen and 2 speakers and A2 stated yes (Q & A 101).

A2 was asked whether he knew what he did was against the law and he stated yes (Q & A 102).

A2 was then told why he entered Villa 444 of the Great Harbour Drive and stole all those items with Maikeli and he stated that he was requested by Maikeli Turagakula to accompany him to the Villa and he was alone and that is why he went with him. (Q & A 103).

22. *A1 has previous conviction whilst A2 is stated as “known” but nil previous conviction. Copies of their previous conviction are annexed hereto marked “A” and “B” respectively.*

23. *Copies of the accused’s record of interview are annexed hereto marked “C” and “D” respectively.”*

[8] Maikeli Turagakula and Jone Delana, you have admitted to the above Summary of Facts and taken full responsibility for your actions.

[9] Section 4(1) of the Sentencing and Penalties Act No. 42 of 2009 (“Sentencing and Penalties Act”) stipulates the relevant factors that a Court should take into account during the sentencing process. The factors are as follows:

4. — (1) The only purposes for which sentencing may be imposed by a court are —

(a) to punish offenders to an extent and in a manner which is just in all the circumstances;

(b) to protect the community from offenders;

(c) to deter offenders or other persons from committing offences of the same or similar nature;

(d) to establish conditions so that rehabilitation of offenders may be promoted or facilitated;

(e) to signify that the court and the community denounce the commission of such offences; or

(f) any combination of these purposes.

[10] I have duly considered the above factors in determining the sentence to be imposed on you.

[11] In terms of Section 313 (1) of the Crimes Act, *“A person commits an indictable offence (of Aggravated Burglary) if he or she-*

(a) Commits a burglary in company with one or more other persons; or

(b)”

The offence of ‘Burglary’ is defined at Section 312 (1) of the Crimes Act as follows: *“A person commits an indictable offence (which is triable summarily) if he or she enters or remains in a building as a trespasser, with intent to commit theft of a particular item of property in the building”.*

The offence of Aggravated Burglary in terms of Section 313 (1) of the Crimes Act carries a maximum penalty of 17 years imprisonment.

[12] 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).

[13] The Court of Appeal in ***Leqavuni v. State*** [2016] FJCA 31; AAU 106.2014 (26 February 2016), observed that the tariff for Aggravated Burglary is between 18 months to 3 years.

[14] This Court has been consistently following the tariff of 18 months to 3 years imprisonment for Aggravated Burglary: Vide ***State v. (Venasio) Cawi & 2 others*** [2018]

FJHC 444; HAC 155.2018 (1 June 2018); **State v. (Taione) Waqa & 2 others** [2018] FJHC 536; HAC 92.2018 (20 June 2018); **State v. Pita Tukele & 2 others** [2018] FJHC 558; HAC 179.2018 (28 June 2018); **State v. (Taione) Waqa & 2 others** [2018] FJHC 995; HAC 92.2018 (17 October 2018); **State v. (Maika) Raisilisili** [2018] FJHC 1190; HAC 355.2018 (13 December 2018); **State v. (Taione) Waqa & 2 others** [2018] FJHC 1209; HAC 92.2018 (18 December 2018); **State v. Michael Bhan** [2019] FJHC 661; HAC 44.2019 (4 July 2019); **State v. Etika Toka** [2019] FJHC 1052; HAC 138.2019 (1 November 2019); **State v. Vakacavuti** HAC337.2018 (7 November 2019); **State v. Vakacavuti** [2019] FJHC 1088; HAC338.2018 (7 November 2019); and **State v Peniasi Ciri and Another** [2020] FJHC 63; HAC14.2019 (6 February 2020).

[15] In terms of Section 291 (1) of the Crimes Act “A person commits a summary offence if he or she dishonestly appropriates property belonging to another with the intention of permanently depriving the other of the property”. The offence of Theft in terms of Section 291 (1) of the Crimes Act carries a maximum penalty of 10 years imprisonment.

[16] In **Ratusili v. State** [2012] FJHC 1249; HAA011.2012 (1 August 2012); His Lordship Justice Madigan proposed the following tariff for the offence of Theft:

“(i) For a first offence of simple theft the sentencing range should be between 2 and 9 months.

(ii) Any subsequent offence should attract a penalty of at least 9 months.

(iii) Theft of large sums of money and thefts in breach of trust, whether first offence or not can attract sentences of up to three years.

(iv) Regard should be had to the nature of the relationship between offender and victim.

(v) Planned thefts will attract greater sentences than opportunistic thefts.”

[17] Since the theft in this case involved assorted property, and was consequent to the two of you entering a residential premises as trespassers, this cannot be considered as theft simpliciter. Furthermore, this was a planned theft. Therefore, it is my opinion that the appropriate tariff in this case should be in the range of 2 months to 3 years imprisonment for the offence of Theft.

[18] In determining the starting point within a tariff, the Court of Appeal, in **Laisiasa Koroivuki v State** [2013] FJCA 15; AAU 0018 of 2010 (5 March 2013); has formulated the following guiding principles:

“In selecting a starting point, the court must have regard to an objective seriousness of the offence. No reference should be made to the mitigating and aggravating factors at this time. As a matter of good practice, the starting point should be picked from the lower or middle range of the tariff. After adjusting for the mitigating and aggravating factors, the final term should fall within the tariff. If the final term falls either below or higher than the tariff, then the sentencing court should provide reasons why the sentence is outside the range.”

[19] In the light of the above guiding principles, and taking into consideration the objective seriousness of the offences, Maikeli and Jone, I commence your sentences at 18 months imprisonment for the first and third counts of Aggravated Burglary.

[20] Similarly, in the light of the above guiding principles, and taking into consideration the objective seriousness of the offences, Maikeli and Jone, I commence your sentences at 6 months imprisonment for the second and fourth counts of Theft.

[21] The aggravating factors are as follows:

- (i) The frequent prevalence of these offences in our society today.
- (ii) You trespassed into residential premises of a foreign national thereby paying scant regard to the property rights and privacy of the owners of the said property.
- (iii) I find that there was pre-planning on your part in committing these offences. From the Summary of Facts it is clear that you both planned to break-in to the residential premises of the complainant. This clearly shows pre-planning on your part.
- (iv) You trespassed in to the residential premises of the complainant on two consecutive days – 25 October and 26 October 2018.
- (v) You are now convicted of multiple offending.

[22] In mitigation you have submitted as follows:

- (i) Jone Delana you are first offender and you have no previous convictions recorded against you. The State too confirms this position. Thus, Jone Delana I will consider you as a person of previous good character.
- (ii) That you fully co-operated with the Police when you were taken in for questioning and subsequently charged instead of trying to circumvent the course of justice.
- (iii) You have submitted that you are truly remorseful of your actions and assured Court that you will not re-offend.

- (iv) That all the stolen items were recovered.
- (iv) That you both entered guilty pleas at the first available opportunity in these proceedings.

[23] Maikeli and Jone, considering the aforementioned aggravating factors, I increase your sentences by a further 4 years. Now your sentences for counts one and three would be 5 years and 6 months imprisonment. Your sentences for counts two and four would be 4 years and 6 months imprisonment.

[24] Maikeli as per your Previous Conviction Report filed in Court, you have been sentenced to six months imprisonment, which sentence was suspended for 12 months, by the Navua Magistrate's Court, on 9 July 2017. This was for the offence of Criminal Trespass. Therefore, this Court is not in a position to consider you as a person of previous good character.

[25] Maikeli I accept that you have fully co-operated with the Police in this matter. I also accept your remorse as genuine. I also accept that all the stolen items were recovered. Accordingly, considering the aforesaid mitigating factors, I deduct 1 year and 6 months from your sentences. Now your sentences for counts one and three would be 4 years imprisonment. Your sentences for counts two and four would be 3 years imprisonment.

[26] Jone I accept that you are a person of previous good character and that you have fully co-operated with the Police in this matter. I also accept your remorse as genuine. I also accept that all the stolen items were recovered. Accordingly, considering the aforesaid mitigating factors, I deduct 2 years and 6 months from your sentences. Now your sentences for counts one and three would be 3 years imprisonment. Your sentences for counts two and four would be 2 years imprisonment.

[27] I accept that you both entered a guilty plea at the first available opportunity. In doing so, you saved precious time and resources of this Court. For your early guilty plea I grant you a further discount of 12 months for counts one and three. Since I propose to make your sentences concurrent I do not deem it necessary to grant you any further discount for counts two and four in lieu of this factor.

[28] In the circumstances, your sentences are as follows:

Maikeli Turagakula:

Count 1- Aggravated Burglary contrary to Section 313 (1) (a) of the Crimes Act- 3 years imprisonment.

Count 2- Theft contrary to Section 291 (1) of the Crimes Act –3 years imprisonment.

Count 3- Aggravated Burglary contrary to Section 313 (1) (a) of the Crimes Act- 3 years imprisonment.

Count 4- Theft contrary to Section 291 (1) of the Crimes Act –3 years imprisonment.

I order that the above sentences of imprisonment to run concurrently. Therefore, your final total term will be 3 years imprisonment.

Jone Delana:

Count 1- Aggravated Burglary contrary to Section 313 (1) (a) of the Crimes Act- 2 years imprisonment.

Count 2- Theft contrary to Section 291 (1) of the Crimes Act –2 years imprisonment.

Count 3- Aggravated Burglary contrary to Section 313 (1) (a) of the Crimes Act- 2 years imprisonment.

Count 4- Theft contrary to Section 291 (1) of the Crimes Act –2 years imprisonment.

I order that the above sentences of imprisonment to run concurrently. Therefore, your final total term will be 2 years imprisonment.

[29] The next issue for consideration is whether your sentences should be suspended.

[30] Section 26 of the Sentencing and Penalties Act provides as follows:

- (1) *On sentencing an offender to a term of imprisonment a court may make an order suspending, for a period specified by the court, the whole or part of the sentence, if it is satisfied that it is appropriate to do so in the circumstances.*
- (2) *A court may only make an order suspending a sentence of imprisonment if the period of imprisonment imposed, or the aggregate period of imprisonment where the offender is sentenced in the proceeding for more than one offence,—*

(a) does not exceed 3 years in the case of the High Court; or

(b) does not exceed 2 years in the case of the Magistrate's Court.

[31] Maikeli you are now 22 years of age [Your Date of birth is said to be 22 September 1997]. At the time of offending you would have been 21 years of age. You are said to be currently residing at Lapanoni Settlement, Pacific Harbour, Navua, with your parents and three sisters. You are currently said to be working as a Carpenter, earning an income of \$240.00 per week.

[32] Jone you are now 23 years of age [Your Date of birth is said to be 15 February 1997]. At the time of offending you would have been 21 years of age. You are said to be currently residing at Lapanoni Settlement, Pacific Harbour, Navua, with your mother, two sisters and brother. You are currently said to be working as a foreman for Raiyud Construction, earning approximately \$300.00 - \$400.00 per week.

[33] You were both arrested for this case on 27 October 2018 and remanded in custody. You were granted bail by this Court on 3 December 2018. Therefore, you have been in remand custody for about one month for this case.

[34] In *Singh & Others v. State* [2000] FJHC 115; HAA 79J of 2000S (26 October 2000); Her Ladyship Madam Justice Shameem held:

"...However as a general rule, leniency is shown to first offenders, young offenders, and offenders who plead guilty and express remorse. If these factors are present then the offender is usually given a non-custodial sentence."

[35] In *Nariva v. The State* [2006] FJHC 6; HAA 148J.2005S (9 February 2006); Her Ladyship Madam Justice Shameem held:

"The courts must always make every effort to keep young first offenders out of prison. Prisons do not always rehabilitate the young offender. Non-custodial measures should be carefully explored first to assess whether the offender would acquire accountability and a sense of responsibility from such measures in preference to imprisonment."

[36] Maikeli, however, you cannot be considered as a first offender. As stated earlier, you have been sentenced to six months imprisonment, which sentence was suspended for 12 months, by the Navua Magistrate's Court, on 9 July 2017. This was for the offence of Criminal Trespass.

[37] Furthermore, I find that you were the mastermind behind this incident. It was you who induced Jone to accompany you to commit these offences.

[38] For these reasons, I am not inclined to suspend your entire sentence. I am of the opinion that a custodial sentence is appropriate in the given circumstances so as to

denounce your conduct and to deter you and other like persons from committing such criminal acts, and also to protect the community.

[39] In the result, Maikeli I order that you should serve in custody 1 year of your sentence of 3 years imprisonment. The balance term of 2 years imprisonment I suspend for a period of 7 years.

[40] Jone, I have considered the following circumstances:

- You are a young offender;
- You have been of previous good character;
- You have fully cooperated with the Police;
- You have accepted responsibility for your conduct;
- You submit that you are truly remorseful of your actions and have sought forgiveness from this Court;
- You have assured Court that you will not re-offend;
- All the stolen items were recovered;
- You entered a guilty plea at the first available opportunity;
- You have already spent one month in remand custody for this case.

Accordingly, it is my opinion that the chances for your rehabilitation is high. Therefore, I deem it appropriate to suspend your sentence.

[41] However, in order to deter you and other persons from committing offences of the same or similar nature, and also to protect the community we live in, I suspend your sentence for a period of 7 years.

[42] In the result, Jone your final sentence of 2 years imprisonment, is suspended for a period of 7 years. You are advised of the effect of breaching a suspended sentence.

[43] You have 30 days to appeal to the Court of Appeal if you so wish.



A handwritten signature in black ink, appearing to read "Riyaz Hamza".

Riyaz Hamza

JUDGE

HIGH COURT OF FIJI

AT SUVA

Dated this 19th Day of February 2020

Solicitors for the State : **Office of the Director of Public Prosecutions, Suva.**
Solicitors for the Accused : **Office of the Legal Aid Commission, Suva.**