

IN THE HIGH COURT OF FIJI AT SUVA

CASE NO: HAC. 368 of 2019

[CRIMINAL JURISDICTION]

STATE

V

1. AM (Juvenile)
2. FUAKILAU WAQANISAU

Counsel : Mr. Z. Zunaid for the State  
Ms. S. Daunivesi for the 2<sup>nd</sup> Accused

Date of Sentence : 08 May 2020

[The name of the juvenile offender is suppressed. Accordingly, the juvenile will be referred to as "AM". 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.]

SENTENCE

1. Fuakilau Waqanisau, you have pleaded guilty to the charges produced below and were convicted as charged accordingly;

**FIRST COUNT**

*Statement of Offence*

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

*Particulars of Offence*

**AM and FUAKILAU QAQAOLAKEBA WAQANISAU** in the company of each other, on the 11<sup>th</sup> day of November, 2019 at Pacific Harbour in the Central Division, entered of **MARCIA and RICK AFFORESELLES**, 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*

**AM and FUAKILAU QAQAOLAKEBA WAQANISAU** in the company of each other, on the 11<sup>th</sup> day of November, 2019 at Pacific Harbour in the Central Division, dishonestly appropriated 1x black Vodafone modem, 1x Palagic brand shorts, 2x Palagic brand long-sleeve t-shirts, 1x pair of Brooks brand canvas, 1x Chinook brand metal piece mast base for wind-surfing, 1x Pair of black flip-flops and 2x Pairs of shorts, the properties of **MARCIA and RICK AFFORESELLES** with the intention of permanently depriving **MARCIA and RICK AFFORESELLES** of the said properties.

2. You have admitted the following summary of facts;
  - 1) *On the 11<sup>th</sup> of November, 2019 at around 5 am, the complainant was sleeping with her husband (PW2) inside their house when she heard a sound near the window. The complainant then got out of bed to check. This is when she saw two men outside her window. She noticed that the window netting was broken. She then saw one of the men take a black Vodafone internet modem which was placed near the window. She further saw the men turn off the lights on the porch and one of them picking her husband's flip-flops. The complainant also saw that there was another man along-with the two men whom she saw. The other man was at the back picking their clothes from the clothesline. Suddenly, the three men saw the complainant and ran away. The complainant then quickly woke PW2 up in which PW2 ran after the men but to no avail.*
  - 2) *The complainant then checked her house and the following items were stolen: 1x black Vodafone modem valued at \$150.00, 1x Palagic brand shorts valued at \$180.00, 2x Palagic brand long-sleeve t-shirt valued at \$300.00, 1x pair of Brooks brand canvas, 1x Chinook brand metal piece mast base for wind-surfing valued at \$400.00, 1x Pair of black flip-flops valued at \$50.00 and 2x shorts valued at \$10.00.*
  - 3) *PW3 stated that on the 11<sup>th</sup> of November, 2019 he had woken up around 5.00am preparing for a church picnic treat at Deuba Pacific Harbour. PW3 stated that he then left the camp-site with the intension of leaving for home to pick up some clothes. PW3 stated that he met the A1 and A2 near Mokosoi bus-stop. PW3 then began chatting with both A1 and A2 when A1 asked PW3 if he wanted to buy a canvas. PW3 saw A1 was holding a pair of canvas and a pair of flip-flops. A1 then began confessing to pW3 that he and A2 had together broken into a house in*

*Pacific Harbour which was near their camp-site. Suddenly, a police vehicle approached them and this is when A1 and A2 began running.*

- 4) *PW4, PW5 and PW6 who are all police officers had received a report of burglary and theft by the complainant and immediately began conducting searches in their police vehicle. PW5 stated that they received information that the perpetrators headed towards the Arts Village in Pacific Harbour. Pw5 stated that he saw A1 who was known to him along the area. PW5 informed A1 not to move however A1 began running away. PW5 managed to chase after and catch A1 however A1 began being aggressive in which PW5 tried to control him but in the process they both fell to the ground. A1 in the process of the struggle obtained an injury to his forehead. PW5 then arrested A1 and informed him for the reasons for his arrest. A1 was then taken to the Pacific Harbour Police Post. A1 thereafter led PW5 to the place where they had hidden the stolen items. PW5 then recovered 1x green and the blue coloured O'niell brand pants, 1x Pelagic brand blue and red coloured ¾ pants and 1x Pelagic brand white long-sleeve t-shirt. A1 was then escorted the Navua police station and Navua hospital for medical attention. A1 was then cautioned interviewed.*
- 5) *A2 who had also ran away when he saw the police officers was also shortly arrested by PW6 at a bush near a drain. A2 was then escorted to the Pacific Harbour Police Post whereby he confessed to the police officers of committing the crime. A2 was known to the police. A2 then led police officers to the place where he had hidden the stolen items. Police recovered 1x base mast and 1x pair of canvas. A2 was then escorted to the Navua Police Station and thereafter caution interviewed.*
- 6) *A1 in his record of interview admitted to the allegation of aggravated burglary and theft (Q&A 29). A1 stated that he met A2 on the day of the incident and A2 told him to go inside a flat and get some stuff (Q&A 42-46). A1 admitted that when they entered the veranda he pulled off 2x ¾ pants and A2 pulled off a long-sleeve t-shirt (Q&A 47). A1 further admitted to taking a pair of canvas and flip-flops (Q&A 48). A1 stated that they then went back to the road and followed their way back (Q&A 50). A1 admitted that they were at the SDA compound when police officers arrived and this is when A2 then ran away however A1 was arrested (Q&A 52-55). A1 in his record interview stated that his friend had made the plan and he just followed, knowing it was wrong. A1 stated in his record of interview that he was remorseful for what had done (Q&A 62-64).*
- 7) *A2 in his caution interview stated that around 5.00 am on the said date of the offence, he was drinking home-brew along the beach with twelve other people (Q&A 28). A2 stated that he then was walking with A1 when A1 asked A2 if they could check a building which belongs to Gopal (Q&A 33). A2 stated that as they*

went to the apartment, they started removing clothes from the clothesline, canvas from the veranda, flip-flops and A2 admitted to taking the wi-fi modem from near the louver (Q&A 34). Whilst they were doing this, they saw movement in the house and they then ran away from the scene. A2 stated that they both then ran towards the Adventist Church compound and hid in two big culverts (Q&A 35). A2 admitted that they had hidden the stolen items near the Yatulau beach access (Q&A 36). Whilst they both hid in the culvert, police officers arrived and they both ran away. Later, A2 stated that the police had managed to arrest him (Q&A 37). The recovered stolen items were shown to A2 and he admitted to stealing the same (Q&A 38-44)

8) Both A1 and A2 entered into the property of the complainants with the intention to steal and thereafter stole items listed in the Information which belonged to the complainants, with the intension of permanently depriving the complainants of their said properties.

9) Annexed hereto is the Record of Interview for A1 marked as “Annexure A”.

10) Annexed hereto is the Record of Interview for A2 marked as Annexure B”.

3. In the case of **State v Chand** [2018] FJHC 830; HAC44.2018 (6 September 2018), Morais J observed thus;

12. Burglary of home must be regarded a serious offence. A home is a private sanctuary for a person. People are entitled to feel safe and secure in their homes. Any form of criminal intrusion of privacy and security of people in their homes must be dealt with condign punishment to denounce the conduct and deter others. As Lord Bingham CJ in **Brewster** 1998 1 Cr App R 220 observed at 225:

*“Domestic burglary is, and always has been, regarded as a very serious offence. It may involve considerable loss to the victim. Even when it does not, the victim may lose possessions of particular value to him or her. To those who are insured, the receipt of financial compensation does not replace what is lost. But many victims are uninsured; because they may have fewer possessions, they are the more seriously injured by the loss of those they do have. The loss of material possessions is, however, only part (and often a minor part) of the reason why domestic burglary is a serious offence. Most people, perfectly legitimately, attach importance to the privacy and security of their own homes. That an intruder should break in or enter, for his own dishonest purposes, leaves the victim with a sense of violation and insecurity. Even where the victim is unaware, at the time, that the burglar is in the house, it can be a frightening experience to learn that a burglary has taken place; and it is all the more frightening if the victim confronts or hears the burglar. Generally speaking, it is more frightening if the victim is in the house when the burglary takes place, and if the intrusion takes place at night; but that does not mean that the offence is not serious if the victim returns to an empty house during the daytime to*

*find that it has been burgled. The seriousness of the offence can vary almost infinitely from case to case. It may involve an impulsive act involving an object of little value (reaching through a window to take a bottle of milk, or stealing a can of petrol from an outhouse). At the other end of the spectrum it may involve a professional, planned organization, directed at objects of high value. Or the offence may be deliberately directed at the elderly, the disabled or the sick; and it may involve repeated burglaries of the same premises. It may sometimes be accompanied by acts of wanton vandalism."*

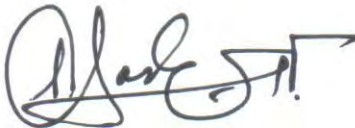
4. The sentencing tariff for the offence of aggravated burglary which carries a maximum penalty of 17 years imprisonment should be an imprisonment term within the range of 6 years to 14 years. [See *State v Prasad* [2017] FJHC 761; HAC254.2016 (12 October 2017) and *State v Naulu* [2018] FJHC 548 (25 June 2018)]
5. The offence of theft contrary to section 291 of the Crimes Act carries a maximum sentence of 10 years. The sentencing tariff is 4 months to 3 years imprisonment. [See *Waqa v State* [2015] FJHC 729; HAA017.2015 (5 October 2015)]
6. In view of the provisions of section 17 of the Sentencing and Penalties Act, I consider it appropriate to impose an aggregate punishment for the two offences you have committed.
7. You are 19 years old and a farmer.
8. According to the summary of facts there was preplanning. This will be considered as an aggravating factor.
9. In addition to the fact that you have entered an early guilty plea, I would consider the following as your mitigating factors;
  - a) You are a first offender;
  - b) You are remorseful;
  - c) Some of the stolen items were recovered; and
  - d) You have cooperated with the police.

10. I would select 06 years as the starting point of your aggregate sentence. I would add 01 year in view of the aforementioned aggravating factor and I would deduct 03 years in view of the above mitigating factors. Now your sentence is an imprisonment term of 04 years.
11. In view of your early guilty plea, I would grant you a discount of one-third. Accordingly, the final sentence is an imprisonment term of 02 years and 08 months.
12. I would fix your non-parole period at 18 months in terms of the provisions of section 18(1) of the Sentencing and Penalties Act. I have considered the circumstances of the offending and your personal circumstances in determining the non-parole period.
13. You have spent about 05 months and 27 days in custody. 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.
14. In the result, you are sentenced to an imprisonment term of 02 years and 08 months with a non-parole period of 18 months. Given the period you have spent in custody, the time remaining to be served is as follows;  

Head sentence - 02 years; 02 months; and 03 days  
Non-parole period -12 months and 03 days
15. Since you have served almost 06 months of your sentence and taking into account the fact that you are a young first offender, I have decided to suspend the remaining period of the sentence imposed on you, for a period of 03 years.
16. The court clerk will explain you the effects of a suspended sentence.

17. Accordingly, you will be released today. You are thoroughly warned and hereby advised to hereafter abide by the laws of this country and to lead a good life.
  
18. 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.