

IN THE HIGH COURT OF FIJI
AT LAUTOKA
CRIMINAL JURISDICTION

CRIMINAL CASE NO. HAC 172 OF 2019

STATE

V

K. R [Juvenile One]

J. T [Juvenile Two]

Counsel : Mr. J.B. Niudamu for the State.
: Ms. K. Vulimainadave for both the Juveniles.
Ms. U. Ravuso for and on behalf of the Social
Welfare Department.

Date of Hearing : 15 May, 2020

Date of Punishment : 15 May, 2020

PUNISHMENT

(The names of the Juveniles are suppressed they will be referred to as K.R. and J.T. respectively)

1. The juveniles are jointly charged by virtue of the following information filed by the Director of Public Prosecutions dated 5th November, 2019.

First Count

Statement of Offence

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

Particulars of Offence

K.R and J.T between the 10th day of August, 2019 and 17th of August, 2019 at Liwativale Primary School, Nalawa, Ra in the Western Division, broke and entered into the school quarters of Anasa Nasedra with intent to commit Theft.

Second Count

Statement of Offence

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

Particulars of Offence

K. R and J. T between the 10th day of August, 2019 and 17th August, 2019 at Liwativale Primary School, Nalawa, Ra in the Western Division, dishonestly appropriated, 1 x video deck valued at \$700.00, 1 x FTA bag valued at \$20.00, 1 x Solar panel valued at \$ 40.00, 1 x 15 metres extension cord valued at \$ 30.00, 1 x 6 plug power board valued at \$25.00, 8 x blankets valued at \$ 360.00, 1 x pullover jacket valued at \$45.00, 1 x bucket of rice valued at \$ 20.00, 1 x bucket of sugar valued at \$ 20.00, 2 towels valued at \$ 20.00, 1 x ladies bag valued at \$ 40.00, 3 x mosquito nets valued at \$ 75.00 and assorted food items valued at \$30.00 all to the total value of \$1,425.00 the property of Anasa Nasedra with the intention of permanently depriving Anasa Nasedra of the above mentioned property.

2. On 13th February, 2020 both the juveniles pleaded guilty to both the above counts in the presence of their counsel, thereafter on 27th

February both the juveniles admitted the summary of facts read by the state counsel as follows:

“Mr. Anasa Nasedra, aged 50 years, Head Teacher (“the complainant”) was residing at the School Quarters at Liwativale Primary School, Nalawa, Ra. On the 10th of August 2019, the complainant securely locked his house and he went to Suva to spend the two (2) weeks school holidays with his family.

Between the 10th of August, 2019 and 17th August, 2019, K.R, 16 years, school leaver of Namara Village, Nalawa, Ra (hereinafter referred to as “Juvenile One”) and J.T, 17 years, student (hereinafter referred to as “Juvenile Two”), of Wainiviti Settlement, Nalawa, Ra broke into the school quarters of the complainant and stole the following items: 1 x video deck valued at \$700.00, 1 x FTA bag valued at \$20.00, 1 x Solar panel valued at \$ 40.00, 1 x 15 metres extension cord valued at \$ 30.00, 1 x 6 plug power board valued at \$25.00, 8 x blankets valued at \$ 360.00, 1 x pullover jacket valued at \$45.00, 1 x bucket of rice valued at \$ 20.00, 1 x bucket of sugar valued at \$ 20.00, 2 towels valued at \$ 20.00, 1 x ladies bag valued at \$ 40.00, 3 x mosquito nets valued at \$ 75.00 and assorted food items valued at \$30.00 all to the total value of \$1,425.00 the property of the complainant.

Both juveniles met and planned to break into the complainant’s house as they knew that the complainant’s house was vacant.

Whilst the complainant was in Suva, he was informed that his house had been broken into and for him to come over and check. Upon arrival, he confirmed that his house had been broken into as he saw the back door being forcefully opened and the inside of the house scattered. Whilst

checking his quarters, he discovered the above mentioned items were stolen. The complainant then reported the matter to Nalawa Police Station.

Both juveniles were arrested, interviewed under caution and they were charged for Aggravated Burglary and Theft. Both juveniles admitted during caution interview for the offence of burglary and theft at the teacher quarters of the complainant. Please refer to questions and answers 21 to 76 of juvenile one interview and 30 to 91 of juvenile two interview.

3. After considering the summary of facts read by the state counsel which was admitted by both the juveniles and upon reading their caution interviews, this court is satisfied that both the juveniles have entered an unequivocal plea of guilty on their own freewill.
4. Both the juveniles also admitted committing the offences in the company of each other. This court is also satisfied that both the juveniles have fully understood the nature of the charges and the consequences of pleading guilty. The summary of facts admitted satisfies all the elements of the offences of aggravated burglary and theft. In view of the above this court finds the juveniles guilty as charged.
5. The learned counsel for the juveniles presented the following mitigation and personal details:

Juvenile One – K. R

- a) The juvenile was 16 years of age at the time of the offending;
- b) First offender;
- c) Pleaded guilty at the earliest opportunity;
- d) Truly remorseful, promises not to reoffend;

- e) Cooperated with police, confessed to the allegations when caution interviewed;
- f) Substantial recovery of stolen items.

Juvenile Two – J. T

- a) The juvenile was 17 years of age at the time of the offending;
- b) First offender;
- c) Pleaded guilty at the earliest opportunity;
- d) Truly remorseful, promises not to reoffend;
- e) Cooperated with police, confessed to the allegations when caution interviewed;
- f) Substantial recovery of stolen items.

REASONS FOR THE COMMISSION OF THE OFFENCES

Counsel for both the juveniles stated that the offences were committed due to peer group pressure.

TARIFF

- 6. The maximum penalty for the offence of aggravated burglary is 17 years imprisonment.
- 7. The accepted tariff for this offence is a sentence between 18 months to 3 years imprisonment (see *Leqavuni v. State, Criminal Appeal No. AAU 106 of 2014 (26 February, 2016)*).
- 8. For the offence of theft the maximum penalty is 10 years imprisonment.

9. The tariff for the offence of theft is settled. In *Mikaele Ratusili v. State, Criminal Appeal no. HAA 011 of 2012 (1 August, 2012)* Madigan J. set out the tariff for theft as follows:

- “(i) For the 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.”*

10. Both the juveniles fall under a special categorization than adults when it comes to punishment under section 30(3) of the Juveniles Act as young persons which prescribes the maximum punishment for young persons at 2 years imprisonment.

11. **AGGRAVATING FACTORS**

The following aggravating factors are obvious in this case:

a) **NIGHT TIME INVASION**

Both the juveniles entered the vacant house after 8pm in the night to avoid detection, they were bold and undeterred.

b) **PLANNING**

The facts show a high degree of planning by both the juveniles which they also admitted in their caution interviews.

SOCIAL WELFARE REPORT

12. As per the order of this court the Social Welfare Department conducted a home assessment and interviews before compiling a pre-punishment report for both the juveniles.
13. The Social Welfare Department recommends the following for the first juvenile K.R that:
 - a) The juvenile stay with his father in the village;
 - b) The juvenile to attend vocational school;
 - c) The juvenile and the father of the juvenile to work with the Social Welfare Department towards keeping the juvenile away from conflict with the law. The juvenile be given a second chance.

Juvenile Two – J.T

14. The Social Welfare Department recommends the following:
 - a) The juvenile be given a second chance;
 - b) Juvenile to be enrolled at Vocational School.
 - c) The juvenile and the father of the juvenile to work with the Social Welfare Department towards keeping the juvenile away from conflict with the law.

PARENTAL SUPPORT

15. The parent of the first juvenile was in court. He has pledged his support for his son.

The father of the first juvenile Mr. Natadra assures the court that he will play a more active role in the life of his son. The juvenile lives with his father at Namara Village, Nalawa, Ra. The juvenile's father is a farmer and is able to earn about \$100.00 per week. Mr. Natadra is keen to see his son go to Penang Vocational Centre and complete his education and become a Carpenter.

The juvenile is also taking responsibility of his actions, is remorseful and promises not to be in conflict with the law again.

The father of the second juvenile was not present in court, however, Ms. Vulimainadave had obtained instructions from the father of the second juvenile Mr. Jone Tuvakasuka who is also a farmer of Namara Village, Nalawa, Ra who earns about 90 per week. The father of the juvenile is very supportive of his son and assures the court that he will have close supervision of his son.

The juvenile also regrets his actions and is remorseful of what he has done with the support of his father he is willing to enroll in a Vocational School and become a Chef.

The parents of both the juveniles have (as part of their commitment) agreed to pay compensation to the victim in the sum of \$200.00 each and be bonded in respect of the good behaviour of their children in the sum of \$350.00.

16. Section 17 of the Sentencing and Penalties Act states:

"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.”

17. Taking into account section 17 of the Sentencing and Penalties Act I prefer to impose an aggregate punishment for the two offences.
18. Considering the objective seriousness of the offences committed I select 18 months imprisonment (lower range of the tariff) as the aggregate punishment of both the offences. For the aggravating factors I increase the punishment by 2 ½ years. The interim punishment now stands at 4 years imprisonment. For the early guilty plea, mitigation, and the police custody and/or remand period the interim punishment is reduced by 2 years and 2 months.
19. The final aggregate punishment for the two offences is 1 year and 10 months imprisonment. Under section 26 (2) (a) of the Sentencing and Penalties Act this court has a discretion to suspend the final punishment since it does not exceed 3 years imprisonment.
20. In *State vs. Alipate Sorovanalagi and others, Revisional Case No. HAR 006 of 2012 (31 May 2012)*, Goundar J. reiterated the following guidelines in respect of suspension of a sentence at paragraph 23:

“[23] In DPP v Jolame Pita (1974) 20 FLR 5, Grant Actg. CJ (as he then was) held that in order to justify the imposition of a suspended sentence, there must be factors rendering immediate imprisonment inappropriate. In that case, Grant Actg. CJ was concerned about the number of instances where suspended sentences were imposed by the Magistrates' Court and those sentences could have been perceived by the public as 'having got away with

it'. Because of those concerns, Grant Actg. CJ laid down guidelines for imposing suspended sentence at p.7:

"Once a court has reached the decision that a sentence of imprisonment is warranted there must be special circumstances to justify a suspension, such as an offender of comparatively good character who is not considered suitable for, or in need of probation, and who commits a relatively isolated offence of a moderately serious nature, but not involving violence. Or there may be other cogent reasons such as the extreme youth or age of the offender, or the circumstances of the offence as, for example, the misappropriation of a modest sum not involving a breach of trust, or the commission of some other isolated offence of dishonesty particularly where the offender has not undergone a previous sentence of imprisonment in the relevant past. These examples are not to be taken as either inclusive or exclusive, as sentence depends in each case on the particular circumstances of the offence and the offender, but they are intended to illustrate that, to justify the suspension of a sentence of imprisonment, there must be factors rendering immediate imprisonment inappropriate."

21. The following relevant special circumstances or special reasons for the suspension of the imprisonment term in my view needs to be weighed in choosing immediate imprisonment or a suspended punishment.
22. The juveniles are young persons as per the Juveniles Act, they are of good character, isolated offences were committed by them, they were 16 and 17 years of age at the time of the offending, pleaded guilty at the earliest opportunity, are genuinely remorseful, cooperated with Police and they take full responsibility of their actions. These special reasons render immediate imprisonment inappropriate.

23. Both the juveniles with parental and family guidance, supervision and support have a bright future ahead of them hence an imprisonment term will not augur well for their future, the juveniles have been in police custody and/ or at the Fiji Juvenile and Rehabilitation Centre which is in itself an adequate and appropriate punishment, an experience that will remind them to keep away from trouble. This court has taken into account rehabilitation over and above deterrence.
24. Having considered section 4 (1) of the Sentencing and Penalties Act this court is of the view that the punishment is just in all the circumstances of the case.
25. Let me remind both the juveniles that leading a life within the boundaries of criminal activities do not assist it only takes a person deeper and deeper into a world of uncertainty and misery. The society does not condone such activities and this court also denounces such behaviour.
26. This is an opportunity for both the juveniles to stop entering the world of uncertainty and lead a happy life with their parents and siblings. The only reason why the punishment is below the tariff is because the Juveniles Act imposes a limit on the punishment of young persons.
27. In summary both the juveniles are given a punishment of 1 year and 10 months imprisonment as an aggregate punishment for both the offences which is suspended for 3 years. The effect of suspended sentence is explained. The following orders are to take effect immediately.

ORDERS

- a) The juveniles are given a punishment of 1 year and 10 months imprisonment each as an aggregate punishment for the two counts mentioned in the information which is suspended for 3 years with immediate effect;
- b) The parents of both the juveniles are to sign a good behaviour bond on behalf of the juveniles in the sum of \$350.00. Furthermore, both the parents of juveniles are to pay the sum of \$200.00 each as compensation to the victim within 21 days from today payable at Rakiraki Magistrate's Court;
- c) The Social Welfare Department, is to immediately arrange for the counseling of both the juveniles in the presence of their parents with the view of assisting them in keeping out of peer group influence and to engage in education and training;
- d) The Social Welfare Department is also at liberty to work out any programs or plans which will be in the interest of both the juveniles;
- e) It is the responsibility of the parents of both the juveniles to ensure that the juveniles obey any directions given by the Social Welfare Department;
- f) A copy of this punishment is to be served on the Officer in Charge of the Social Welfare Department;

g) 30 days to appeal to the Court of Appeal.



Sunil Sharma
Judge



At Lautoka

15 May, 2020

Solicitors

Office of the Director of Public Prosecutions for the State.

Office of the Legal Aid Commission for both the Juveniles.