

**IN THE HIGH COURT OF FIJI**  
**AT LAUTOKA**  
**CRIMINAL JURISDICTION**

**CRIMINAL CASE NO. HAC 132 OF 2019**

**STATE**

**V**

**J. R** [Juvenile]

**Counsel** : Mr. R. Chand for the State.  
: Ms. A. Bilivalu for the Juvenile.  
Mr. E. Toutou for and on behalf of the Social  
Welfare Department.

**Date of Hearing** : 11 June, 2020

**Date of Punishment** : 26 June, 2020

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**PUNISHMENT**

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*(The name of the Juvenile is suppressed he will be referred to as J.R.)*

1. The juvenile is charged by virtue of the following information filed by the Director of Public Prosecutions dated 25<sup>th</sup> November, 2019.

## **FIRST COUNT**

### ***Statement of Offence***

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

### ***Particulars of Offence***

**J.R** with others, on the 1<sup>st</sup> day of August, 2019 at Nadi, in the Western Division, broke into the **NADI AIRPORT SCHOOL CANTEEN**, as trespassers, with intent to commit theft.

2. On 14<sup>th</sup> February, 2020 the juvenile pleaded guilty to the above count in the presence of his counsel, thereafter on 5<sup>th</sup> June, 2020 the juvenile admitted the summary of facts read by the state counsel as follows:

*“The complainant in this matter is Lily Yee Sharan, 42 years old, canteen owner of Namaka Hill, Votualevu, Nadi. The complainant’s canteen is located at the Nadi Airport School, Nadi (hereinafter referred to as the ‘school’).*

*The juvenile in this matter is J.R, 15 years old, student of Balabala Street, Waqadra, Nadi.*

*On the 1<sup>st</sup> of August, 2019 at around 8pm, the juvenile and two others had climbed a big tree and jumped into the school compound to steal juice from the school canteen. Sakeasi Vakula (hereinafter referred to as ‘PW1’) was returning home from a shop near the school when he noticed some boys in the school compound.*

*While in the school, the juvenile kicked the screen window of the canteen and the shutters opened.*

*The police arrived at the scene and the juvenile was taken to the police station. The juvenile was interviewed under caution with the presence of a social welfare officer, Eroni Toutou. During the course of the caution interview the juvenile admitted to kicking the screen window and shutters of the canteen [Q. & A. 34] and it opened but no one entered [Q. & A. 35] because someone had come to the school and they ran away. Attached herewith is a copy of the record of interview of J. R.*

*The juvenile was then charged for one count of aggravated burglary: contrary to section 313 (1) (a) of the Crimes Act 2009.*

3. After considering the summary of facts read by the state counsel which was admitted by the juvenile and upon reading his caution interview, this court is satisfied that the juvenile has entered an unequivocal plea of guilty on his own freewill.
4. The juvenile also admitted committing the offence in the company of others. This court is also satisfied that the juvenile has fully understood the nature of the charge and the consequences of pleading guilty. The summary of facts admitted satisfies all the elements of the offence of aggravated burglary. In view of the above, this court finds the juvenile guilty as charged.
5. The learned counsel for the juvenile presented the following mitigation and personal details.
  - a) The juvenile was 15 years at the time of the offending;
  - b) He is financially supported by his parents;
  - c) Juvenile is a Year 11 student;

- d) First offender;
- e) A young person;
- f) Pleaded guilty at the earliest opportunity.
- g) Remorseful, cooperated with the police;
- h) Seeks forgiveness and promises not to reoffend;
- g) Nothing was stolen.

### **REASONS FOR THE COMMISSION OF THE OFFENCE**

- 6. The counsel for the juvenile stated that the juvenile committed this offence under peer group influence a case of wrong judgment.

### **TARIFF**

- 7. The maximum penalty for the offence of aggravated burglary is 17 years imprisonment.
- 8. 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).*)
- 9. The juvenile falls under a special categorization when it comes to punishment under section 30 (3) of the Juveniles Act as a young person which prescribes the maximum punishment for young persons at 2 years imprisonment.

## **AGGRAVATING FACTORS**

10. The following aggravating factors are obvious in this case:

a) NIGHT TIME INVASION

The juvenile and others entered the school compound and broke into the school canteen at around 8pm. The juvenile by his act of kicking caused damage to the canteen screen window and shutters.

b) PLANNING

The facts show a high degree of planning by the juvenile which he admitted in his caution interview. The juvenile was bold and undeterred when he climbed over the tree and jumped into the school compound.

## **SOCIAL WELFARE REPORT**

11. As per the order of this court the Social Welfare Department conducted a home assessment and interviews before compiling a pre-punishment report for the juvenile.

12. The Social Welfare Department recommends the following for the juvenile that:

- a) The juvenile be granted a non-custodial sentence with no conviction;
- b) The juvenile to do community work so that he acquires accountability and a sense of responsibility;
- c) The juvenile is to work in collaboration with a community supervisor to assist in rehabilitation.

## **PARENTAL SUPPORT**

13. The parents of the juvenile were in court, they have pledged their support for their son. Due to the COVID-19 Pandemic both the parents have lost their employment, however, as a family they have now started a small business which is sustaining the family's needs financially. In two days the family is able to earn about \$400.00 which is a good start for the family. The mother of the juvenile honestly admitted that they were not able to provide much guidance to their son who is the younger of the two siblings. Both the parents have assured the court of their full commitment towards rehabilitating their son, they have also stated that they will work with the Social Welfare Department in any programs they may wish to implement for their son. The parents are going to be vigilant on who the juvenile's friends are.
14. Both parents have agreed to pay \$100.00 as compensation to the complainant for the damages sustained and also to enter into a bond of \$250.00 each as part of their commitment.
15. The juvenile also expressed his remorse in court he takes full responsibility for his actions and he promises not to be in conflict with the law again. He has learnt his lesson and promises not to repeat the same. The juvenile wishes to complete his education and become an Aircraft Engineer.
16. Considering the objective seriousness of the offence committed I select 18 months imprisonment (lower range of the tariff) as the starting point of the punishment. 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 the interim punishment is reduced by 2 years and 2 months.

17. The final punishment for the 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.
18. 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."*

19. 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.
20. The juvenile is a young person as per the Juveniles Act, he is of good character, an isolated offence was committed by him, he was 15 years of age at the time of the offending, pleaded guilty at the earliest opportunity, is genuinely remorseful, cooperated with police and takes full responsibility of his actions. These special reasons render immediate imprisonment inappropriate.
21. The juvenile with parental and family guidance, supervision and support has a bright future ahead of him hence an imprisonment term will not augur well for his future, the juvenile has been in police custody which is in itself an adequate and appropriate punishment, an experience that will remind him to keep away from trouble. This court has taken into account rehabilitation over and above deterrence.
22. 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.
23. Let me remind the juvenile 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.

24. This is an opportunity for the juvenile to stop entering the world of uncertainty and lead a happy life with his parents and sibling. The only reason why the punishment is below the tariff is because the Juvenile Act imposes a limit on the punishment of young persons.
25. In summary the juvenile is given a punishment of 1 year and 10 months imprisonment which is suspended for 3 years. The effect of suspended sentence is explained. The following orders are to take effect immediately.

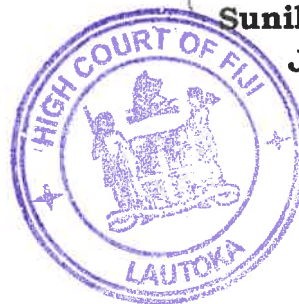
### **ORDERS**

- a) The juvenile is given a punishment of 1 year and 10 months imprisonment which is suspended for 3 years with immediate effect;
- b) The parents of the juvenile are to sign a good behaviour bond on behalf of the juvenile in the sum of \$250.00 each. Furthermore, both the parents of the juvenile are to pay the sum of \$100.00 as compensation to the victim within 21 days from today payable at Nadi Magistrate's Court;
- c) The Social Welfare Department is to immediately arrange for the counseling of the juvenile in the presence of their parents with the view of assisting him 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 the juvenile;
- e) It is the responsibility of the parents of the juvenile to ensure that the juvenile obeys 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**

26 June, 2020

**Solicitors**

**Office of the Director of Public Prosecutions for the State.**

**Office of the Legal Aid Commission for the Juvenile.**