

IN THE HIGH COURT OF FIJI

AT SUVA

[CRIMINAL JURISDICTION]

CRIMINAL CASE NO: HAC 14 of 2019

STATE

V

1. PENIASI CIRI

2. NEOMI DELANA

Counsel : Mr. Rajneel Kumar for the State
Ms. Namrata Mishra for the 1st Accused
Ms. Mele Ratidara for the 2nd Accused

Sentence Hearing : 16 October 2019

Sentence : 6 February 2020

SENTENCE

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

FIRST COUNT

Statement of Offence

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

Particulars of Offence

PENIASI CIRI and NEOMI DELANA, on the 27th and 28th day of December 2018, at Nasinu, in the Central Division, in the company of each other broke and

entered into the **NAYAN'S SUPERMARKET** 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

PENIASI CIRI and NEOMI DELANA, on the 27th and 28th day of December 2018, at Nasinu, in the Central Division, dishonestly appropriated (stole) assorted liquor, assorted cigarettes and \$136.00 cash, the properties of **NAYAN'S SUPERMARKET** with intention of permanently depriving it of the said properties.

- [2] On 25 March 2019, the DPP filed the Disclosures relevant to the case; while on 15 May 2019, the Information was filed.
- [3] On 29 May 2019, you were ready to take your pleas. You pleaded guilty to both 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 2 July 2019, the State filed the Summary of Facts. On the same day 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 two counts in the Information, and found the two 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 two counts as charged.
- [5] I now proceed to pass sentence on the two of you.
- [6] The Summary of Facts filed by the State was as follows:

"Complainant – Nayan's Supermarket

Accused 1 – Peniasi Ciri (Age 20) (hereinafter A1)

Accused 2 – Neomi Delana (Age 20) (hereafter A2)

Location of offence: Nayan Supermarket, Khalsa Road, Nasinu

Between the 27th day of December 2018, between 9.00 p.m. to 28th day of December 2018, at 8.00 a.m., at Nayan's Supermarket, located at Khalsa

Road, Nasinu, A1 and A2 in company of each other, broke and entered into the said Nayan's Supermarket as trespassers with the intent to commit theft.

On the said day time and location, A1 and A2 in company of each other stole assorted liquor, assorted cigarettes and cash belonging to Nayan's Supermarket with the intention of permanently depriving it of the said properties.

The matter was reported to the police and the accused persons were identified from the CCTV footage at the said supermarket.

A1 was arrested and caution interviewed. He admitted that he and A2 planned to break into the said supermarket. He admitted that he and A2 entered the supermarket by cutting the iron roof of the supermarket with a tin snip and stole assorted items.

(Refer to A1's Caution Interview Q & A 27 – 54) annexed as "AX1")

A2 was arrested and caution interviewed. He admitted that he and A1 planned to break in the said supermarket. He admitted that he and A1 entered the supermarket by cutting the iron roof of the supermarket with a tin snip and stole assorted items. He admitted that assorted stolen items were put in a bag to carry it.

(Refer to A2's Caution Interview Q & A 39 – 49) annexed as "AX2")

The following items were recovered from A1's house:

- 1.) 5 x Dallmall 10*
- 2.) 199 x 5 cents*
- 3.) 185 x 5 cents*
- 4.) 142 x 5 cents*
- 5.) Black Puma Bag.*

The Accused persons were then charged with 1 count of aggravated burglary contrary to section 311 (1) (a) of the Crimes Act 2009 and theft contrary to section 291 (1) of the Crimes Act 2009."

- [7] Peniasi and Neomi, you have admitted to the above Summary of Facts and taken full responsibility for your actions.
- [8] 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.

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

[10] 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.

[11] 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).

[12] 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.

[13] 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); and **State v. Etika Toka** HAC 138.2019 (1 November 2019).

[14] 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.

[15] 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.”

[16] Since the theft in this case involved assorted property and in addition cash to the value of \$136.00, and was consequent to the two of you entering the premises of a commercial property as trespassers, this cannot be considered as theft simpliciter. 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.

[17] 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.”

[18] In the light of the above guiding principles, and taking into consideration the objective seriousness of the offence, Peniasi and Neomi, I commence your sentences at 18 months imprisonment for the first count of Aggravated Burglary.

[19] Similarly, in the light of the above guiding principles, and taking into consideration the objective seriousness of the offence, Peniasi and Neomi, I commence your sentences at 6 months imprisonment for the second count of Theft.

[20] The aggravating factors are as follows:

- (i) The frequent prevalence of these offences in our society today.
- (ii) You trespassed into commercial property 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. You have admitted in the Summary of Facts that you two planned to break-in to the supermarket. This clearly shows pre- planning on your part.
- (iv) You are now convicted of multiple offending.

[21] In mitigation you have submitted as follows:

- (i) That you are both first offenders and that you have no previous convictions to date. The State too confirms that there are no previous convictions recorded against you. Neomi Delana I am aware that you are now in remand custody for another case before the Suva High Court. However, since a final determination has not been reached in that case as yet, I will consider you as a person of previous good character for the purpose of sentencing in this case.

- (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 you both entered guilty pleas at the first available opportunity in these proceedings.

[22] Peniasi and Neomi, considering the aforementioned aggravating factors, I increase your sentences by a further 4 years. Now your sentences for count one would be 5 years and 6 months imprisonment. Your sentences for count two would be 4 years and 6 months imprisonment.

[23] I accept that you both are persons of previous good character and that you have fully co-operated with the Police in this matter. I also accept your remorse as genuine. Accordingly, considering the mitigating factors, I deduct 2 years and 6 months from your sentences. Now your sentences for count one would be 3 years imprisonment. Your sentences for count two would be 2 years imprisonment.

[24] I accept that you 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 count one. Since I propose to make your sentences concurrent I do not deem it necessary to grant you any further discount for count two in lieu of this factor.

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

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.

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

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

[27] 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.

[28] Peniasi you are now 21 years of age [Your Date of birth is said to be 16 December 1998]. At the time of offending you would have been 20 years of age. You are said to be currently residing at Waicoka Village, Bau, Tailevu, with your grandparents. You are now said to be unemployed. However, previously you were said to be employed as a construction worker, earning \$150.00 per week.

[29] Neomi you are now 20 years of age [Your Date of birth is said to be 27 July 1999]. At the time of offending you would have been 19 years of age. You are said to be currently residing at Khalsa Road, Tacirua with your mother, younger sister who is 18 years old, and a student at Hilton Special School and a younger brother who is only 3 years old. You had studied up to Form 4 level at Dudley High School; and you were employed as a construction worker, earning \$120.00 per week, to help your mother.

[30] You were both arrested for this case on 31 December 2018 and remanded in custody. You were granted bail by this Court on 30 January 2019. Therefore, you have been in remand custody for about one month for this case.

[31] 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.”

[32] 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.”

[33] I have considered the following circumstances:

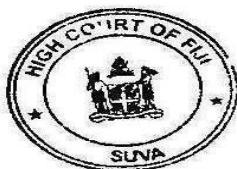
- You are both young offenders;
- You both have been of previous good character;
- You have fully cooperated with the Police;
- You have accepted responsibility for your conduct;
- You submit that you are truly remorseful of your actions and have sought forgiveness from this Court;
- You have assured Court that you will not re-offend;
- You both 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 sentences.

[34] 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.

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

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



Riyaz Hamza
JUDGE
HIGH COURT OF FIJI

AT SUVA

Dated this 6th 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.**