

IN THE HIGH COURT OF FIJI

AT SUVA

[CRIMINAL JURISDICTION]

CRIMINAL CASE NO: HAC 102 of 2020

STATE

v

ERIC MALE ROBAROBALEVU

Counsel : Ms. Sujata Lodhia for the State
Ms. Ruci Nabainivalu for the Accused

Sentence Hearing : 2 July 2020

Sentence : 6 August 2020

SENTENCE

[1] Eric Male Robarobalevu, 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

ERIC MALE ROBAROBALEVU & ANOTHER, between the 1st day of March 2020 and the 2nd day of March 2020, at Lami, in the Central Division, in the company of each other, entered into the dwelling house of **GEORGE VULACA**, 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

ERIC MALE ROBAROBALEVU & ANOTHER, between the 1st day of March 2020 and the 2nd day of March 2020, at Lami, in the Central Division, dishonestly appropriated 1x Samsung brand Galaxy A70 mobile phone, 1x green backpack, 1x quicksilver wallet containing voter ID card, ATM card and \$75 cash, 1x Bluetooth speaker, 1x handbag containing Westpac bank ATM card and various ID cards, 1x Fit-bit watch, 1x Everest brand canvas, 2x pairs of flip flops, 2x Bluetooth headphones, 1x PS4 headphone and remote, 1x Samsung brand A30 mobile phone, 1x Samsung brand J2 mobile phone and 1x sunglass, the properties of **GEORGE VULACA** and **SHYNE VULACA** with the intention of permanently depriving **GEORGE VULACA** and **SHYNE VULACA** of their properties.

- [2] On 6 May 2020, the DPP filed the Information and Disclosures relevant to the case. The matter was adjourned for 27 May 2020 for plea.
- [3] On 27 May 2020, you were ready to take your plea. 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] The Summary of Facts were filed in Court on 17 June 2020. 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 plea 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 guilty on your own plea and I convicted you of the two counts as charged.
- [5] I now proceed to pass sentence on you.
- [6] The Summary of Facts filed by the State was as follows:
1. *The complainant in this matter is George Vulaca, 37 years old, Seaman, resides at Lot 21 Marine Drive, Lami.*
 2. *PW2 is Shyne Vulaca, 36 years old, resides at Lot 21 Marine Drive, Lami.*
 3. *The accused is Eric Male Robarobalevu, 18 years old, Student, resides at Suvavou Village, Lami.*

4. *The accused is charged and has voluntarily pleaded guilty to one count of aggravated burglary and theft contrary to section 313 (1) (a) and 291 (1) of the Crimes Act 2009.*

5. *On 1st March 2020 at about 10.30 pm, the complainant was home with his wife (PW2). He slept at around 10.45 p.m. Sometime around 12.00 a.m., his wife woke him up and informed him that there was a break-in. He checked the house and noticed that the grill bars were removed from one of the windows in the living room. The following items were stolen:*

- *1 x Samsung Galaxy A70 mobile phone valued at \$1,299*
- *1 x green backpack valued at \$60 containing 1 x brown quicksilver wallet containing voter ID card and ATM card and \$75 cash*
- *1 x Bluetooth speaker valued at \$120*
- *1 x handbag valued at \$49 containing various Westpac bank ATM card and ID cards*
- *1 x Fit-bit brand canvas valued at \$390*
- *1 x Everest brand canvas valued at \$50*
- *2 x hat ocean brand flip flops valued at \$24*
- *2 x Bluetooth headphones valued at \$20 each*
- *1 x PS4 headphone and remote valued at \$450*
- *1 x Samsung A30 mobile phone*
- *1 x Samsung J2 mobile phone valued at \$160*
- *1 x sunglass valued at \$100*

6. *Investigations led to the accused being arrested. On 7th March 2020, he was interviewed under caution by DC Mosese at Lami Police Station. In his caution interview, the accused voluntarily states that on 1st March 2020, he was home. Between 10.00 p.m.-12.00 a.m., he went to the Chinese shop to buy recharge and met his cousin brother (accomplice) at the road side. The accomplice asked the accused to go to a house along Marine Drive. They went to the complainant's house to steal. His accomplice entered the house through the window while the accused waited for him to pass the items from inside. They took 1 x green bag, 1 x red bag, 1 x Bluetooth speaker, 1 x headset, 1 x sunglass, and 1 x Samsung mobile phone. The accused could only remember these items. They took the items to the accomplice's house and the accused only took 1 x pair of white flip flops. A copy of the caution interview is attached herewith as Annexure 1.*

7. *1 x Samsung brand A70 mobile phone, 1 x headphone, 1 x Bluetooth speaker, 1 x pair of white flip flops, 1 x handbag, 1 x pair of Cloud Break brand flip flops, 1 x Sony brand play station, 1 x headset, 1 x Quicksilver brand wallet and 1 x watch were recovered in relation to this matter."*

[7] Eric, 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); *State v. Etika Toka* 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); *State v. Peniasi Ciri and Another* [2020] FJHC 63; HAC14.2019 (6 February 2020); *State v. Maikeli Turagakula and Another* [2020] FJHC 101; HAC416.2018 (19 February 2020); *State v. (Sachindra Sumeet) Lal & Another* [2020] FJHC 147; HAC71.2019 (26 February 2020); *State v. (Rupeni) Lilo* [2020] FJHC 401; HAC225.2018 (9 June 2020); and *State v. (Taniela) Tabuakula* [2020] FJHC 464; HAC106.2020 (23 June 2020).
- [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 *Ratusill 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 of high value, and was consequent to you and your accomplice entering a residential premises as trespassers, this cannot be considered as theft simpliciter. Furthermore, this was a pre-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.

[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 Eric, I commence your sentence 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, Eric, I commence your sentence 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 and your accomplice trespassed into a residential premises thereby paying scant regard to the property rights and privacy of the owner of the said property. And you did so late in the night.
- (iii) I find that there was some degree of pre-planning on your part (and the accomplice) in committing these offences.
- (iv) Not all of the stolen items were recovered in this case. Only some of the stolen items had been recovered.
- (v) You are now convicted of multiple offending.

[21] In mitigation you have submitted as follows:

- (i) That you are first offender and that you have no previous convictions to date. The State too confirms that there are no previous convictions recorded against you.
- (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) Some of the stolen items had in fact been recovered
- (v) That you entered a guilty plea at the earliest opportunity during these proceedings.

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

[23] 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 acknowledge the fact that some of the stolen items had been recovered. Accordingly, considering the mitigating factors, I deduct 2 years and 6 months from your sentences. Now your sentence for count one would be 3 years imprisonment. Your sentence for count two would be 2 years imprisonment.

[24] I accept that you entered a guilty plea at the earliest opportunity during these proceedings. 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 each for counts one and two.

[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 –1 year 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] Eric you are 18 years of age [Your Date of birth is 19 February 2002]. In fact, you turned 18, less than 2 weeks prior to the date of offending. You are said to be residing in Suvavou Village in Lami. You are a year-12 student at Ratu Sukuna Memorial School.

[29] Eric you have admitted to the Summary of Facts and taken full responsibility for your actions. You say you understand that what you did was wrong and regret your actions. You have submitted that you were merely following the request made by the accomplice in this case (who is your cousin brother and a juvenile) and whilst the accomplice had entered the complainant's house, you had remained outside as a look out.

[30] Eric you were arrested for this case on 7 March 2020 and was granted bail by the Magistrate's Court of Suva on 9 March 2020. Therefore, you have been in remand custody for this case for about 2 days.

[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."

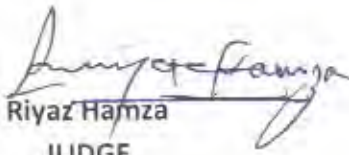
[33] I have considered the following circumstances:

- You are 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;
- Some part of the stolen items have been recovered;
- You entered a guilty plea at the earliest opportunity in these proceedings;
- You spent about 2 days 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.

- [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 5 years.
- [35] In the result, Eric your final sentence of 2 years imprisonment, is suspended for a period of 5 years. You are 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 August 2020

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