

IN THE HIGH COURT OF FIJI
AT LAUTOKA
CRIMINAL JURISDICTION

Criminal Case No.: HAC 143 of 2020

STATE

V

1. **J.V.** [Juvenile]
2. **JOSEFA TUITOGA** [Accused]

Counsel : Mr. A. Kumar for the State.
: Ms. A. Bilivalu for the Accused.

Date of Submissions : 09 February, 2021

Date of Sentence : 22 February, 2021

SENTENCE

1. The juvenile and the accused are charged with the following offences as per the consolidated information filed by the Director of Public Prosecutions dated 27th October, 2020:

FIRST COUNT

Statement of Offence

FAILURE TO COMPLY WITH ORDERS: Contrary to section 69 (1) (c) and 3 (c) of the Public Health Act 1935 and Section 2 of the Public Health (Infections Diseases) Regulation 2020.

Particulars of Offence

J.V. and **JOSEFA TUITOGA**, between the 19th day of August, 2020 and the 20th day of August, 2020 at Ba Town in the Western Division, without lawful excuse, failed to comply with an order of the Permanent Secretary for Health and Medical Services namely by breaching the curfew hours which was set in place for the protection of public health.

SECOND COUNT

Statement of Offence

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

Particulars of Offence

J.V. and **JOSEFA TUITOGA**, between the 19th day of August, 2020 and the 20th day of August, 2020 at Ba Town in the Western Division, entered the Lotus Foreign Exchange as a trespasser with the intention to steal from therein.

THIRD COUNT

Statement of Offence

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

Particulars of Offence

J.V. and **JOSEFA TUITOGA**, between the 19th day of August, 2020 and the 20th day of August, 2020 at Ba Town in the Western Division, dishonestly appropriated (stole) the following items:

- a) 1 x Black Coral reef bag;
- b) 1 x Samsung Galaxy J5 prime mobile;

The properties of Lotus Foreign Exchange, with the intention of permanently depriving the said Lotus Foreign Exchange of the said properties.

FOURTH COUNT

Statement of Offence

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

Particulars of Offence

J.V. and **JOSEFA TUITOGA**, between the 19th day of August, 2020 and the 20th day of August, 2020 at Ba Town in the Western Division, entered the Restaurant and house of Arumina Chand, as a trespasser with the intention to steal from therein.

FIFTH COUNT

Statement of Offence

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

Particulars of Offence

J.V. and **JOSEFA TUITOGA**, between the 19th day of August, 2020 and the 20th day of August, 2020 at Ba Town in the Western Division, dishonestly appropriated (stole) the following items:

- a) 1 x gold Mangalsutra;
- b) 1 x ball Mala gold necklace;
- c) 5 x pairs of gold earrings;
- d) 2 x gold rings;
- e) 1 x gold rope chain with attached “rudraskh” and “om” pendant;
- f) 1 x gold necklace and earrings;
- g) 1 x Titan ceramic ladies wrist watch;
- h) Stolen cash \$1300.00;
- i) \$300.00 NZD;
- j) 2 x ladies perfume;
- k) 1 x ladies joggers shoes;

- l) 2 x Wine;
- m) 1 x mobile;

The properties of Arunima Chand, with the intention of permanently depriving the said Arunima Chand of the said properties.

ALTERNATIVE COUNT

Statement of Offence

RECEIVING: Contrary to section 306 (1) of the Crimes Act 2009.

Particulars of Offence

J.V. between the 19th day of August, 2020 and the 29th day of August, 2020, at Lautoka in the Western Division, dishonestly received 1 Indra perfume, the property of Arunima Chand, knowing or believing that the said property to be stolen.

- 2. On 23rd November, 2020 the accused pleaded guilty to the first count of failure to comply with orders in the presence of his counsel.
- 3. Thereafter on 25th January, 2021 the accused admitted the summary of facts read by the state counsel. The summary of facts is as follows:

On 19th August, 2020 the accused and another were seen on the roof top of the Lotus Foreign Exchange building in Ba Town during the curfew hours. The accused with another were arrested and caution interviewed by the police. The accused in his caution interview admitted that he was on the roof top of the building with another until 4am (Q&A. 89).

- 4. After considering the summary of facts read by the state counsel which was admitted by the accused and upon reading his caution interview this court is satisfied that the accused has entered an unequivocal plea of guilty on his freewill.

5. This court is also satisfied that the accused has fully understood the nature of the charge and the consequences of pleading guilty.
6. The summary of facts admitted by the accused satisfies all the elements of the offence.
7. In view of the above, this court finds the accused guilty as charged and he is convicted accordingly.
8. Both counsel have filed written sentence and mitigation submissions for which this court is grateful.
9. The counsel for the accused presented the following personal details and mitigation on behalf of the accused:
 - a) The accused is a first offender;
 - b) He is 22 years of age and pleaded guilty at the earliest opportunity;
 - c) Employed as a Barber earning \$240.00 per week;
 - d) He resides with his uncle and aunt;
 - e) His actions were out of character;
 - f) Cooperated with police;
 - g) He is remorseful, seeks forgiveness from the court and promises not to reoffend.

TARIFF

10. The maximum penalty for the offence of failure to comply with orders is a fine not exceeding \$10,000.00 or an imprisonment term of 5 years or both. There is no set tariff for this offending but the sentencing trend has been mostly a suspended sentence and a fine depending upon the facts and circumstances of the offending.

11. The accused counsel in her thoughtful submissions states that the accused comes from a broken family, his parents separated when he was a young child and at one time in his life he was left to live on the streets.

REASONS FOR THE COMMISSION OF THE OFFENCE

12. Due to peer group influence the accused had committed this offence. Fortunately, the accused is now looked after by his uncle and aunt who are taking care of all his needs and expenses.

AGGRAVATING FACTORS

13. The following aggravating factors are obvious:

- a) Planning

The accused was not alone there is a degree of planning involved he knew what he was doing was wrong and he did not pay any heed to the consequences. He was bold and undeterred this offence was committed in the central business division of Ba Town.

FINANCIAL MEANS

14. In mitigation the accused counsel mentioned that the accused earns \$240.00 per week. He is living with his uncle and aunt who pays for all his expenses, his wages is his net savings.
15. Considering the objective seriousness of the offence committed I take 15 months imprisonment as the starting point of the sentence. I add 6 months for the aggravating factor bringing the interim total to 21 months imprisonment. For the good character (first offender) and other mitigating factors the sentence is reduced by 6 months. The interim sentence now stands at 15 months imprisonment. The accused has pleaded guilty and

shown genuine remorse hence the sentence is further reduced by 5 months the sentence is now 10 months imprisonment.

16. I note from the court file that the accused has been remanded for 3 months and 23 days in accordance with section 24 of the Sentencing and Penalties Act I further reduce the sentence as a period of sentence already served.
17. The final sentence of imprisonment is now 6 months and 7 days under section 26 (2) (a) of the Sentencing and Penalties Act this court has discretion to suspend the final sentence since it does not exceed 3 years imprisonment.
18. The following relevant special circumstances or special reasons for the suspension of the imprisonment term in my view needs to be weighed in choosing an immediate imprisonment or a suspended sentence.
19. The accused is a young offender of a good character, isolated offence was committed by him, he was 22 years of age at the time of the offending, pleaded guilty at the earliest opportunity, is genuinely remorseful, and cooperated with police. These special reasons render immediate imprisonment inappropriate.
20. Mr. Tuitoga the curfew is imposed for a reason which was to stop an infectious disease from spreading in Fiji you had not only put yourself at risk but others as well. You have to understand that a pandemic has serious financial implications if the members of the public do not adhere to the restrictions put in place.
21. In summary the accused is sentenced to 6 months and 7 days imprisonment for one count of failure to comply with orders which is suspended for 18 months. The effect of suspended sentence is explained to the accused. In addition to this, taking into consideration the financial means and capability

of the accused this court orders the accused to pay a fine of \$250.00 payable in 30 days from today in default 30 days imprisonment.

22. 30 days to appeal to the Court of Appeal.



Sunil Sharma

Judge



At Lautoka

22 February, 2021

Solicitors

Office of the Director of Public Prosecutions for the State.

Office of the Legal Aid Commission for the Accused.