

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

**CRIMINAL CASE NO. HAC 126 of 2020**

**STATE**

**V**

**A. A. A** [Juvenile One]

**AND**

**T. F. N** [Juvenile Two]

**AND**

**J. W. V** [Juvenile Three]

**Counsel:** Mr. R. Chand for the State.  
Ms. V. Narara for all the Juveniles.  
Ms. M. Simpson for and on behalf of the Social Welfare  
Department.

**Date of Hearing:** 10 December, 2020

**Date of Punishment:** 21 January, 2021

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**PUNISHMENT**

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*(The names of all the juveniles are suppressed they will be referred to as "A.A.A", "T.F.N" and "J.W.V" respectively).*

1. All the juveniles are charged by virtue of the following information filed by the Director of Public Prosecutions dated 17<sup>th</sup> September, 2020:

### **First Count**

#### *Statement of Offence*

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

#### *Particulars of Offence*

“A.A.A”, “T.F.N” and “J.W.V” on the 3<sup>rd</sup> day of June, 2020 at Nadi in the Western Division, broke into the dwelling house of MARGRET YATES 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*

“A.A.A”, “T.F.N” and “J.W.V” on the 3<sup>rd</sup> day of June, 2020 at Nadi in the Western Division, dishonestly appropriated assorted household items, the property of MARGRET YATES with the intention of permanently depriving MARGRET YATES of the said property.

2. On 20<sup>th</sup> October, 2020 all the juveniles pleaded guilty to the above two counts in the presence of their counsel. Thereafter on 10<sup>th</sup> November, all the juveniles admitted the summary of facts read by the state counsel as follows:
  1. *The complainant in this matter is Aliposo Vakaloloma, 59 years old, retiree of Olosara, Sigatoka.*
  2. *The 1<sup>st</sup> Juvenile of this matter is A. A. A, 16 years old, student of Tagaqe Village, Sigatoka.*
  3. *The 2<sup>nd</sup> Juvenile of this matter is T. F. N, 16 years old, student of Nasama Village, Sigatoka; and*
  4. *The 3<sup>rd</sup> Juvenile of this matter is J. W. V, 15 years old, student of Nanaga Settlement, Bara, Sigatoka.*

5. *The complainant is the caretaker of the farm house in Navovo which is owned by a Margaret Yates of Australia.*
6. *On the 15<sup>th</sup> May, 2020, the complainant had gone to the farm house to check on it and noticed that everything was alright. On that same day, the complainant had gone to Suva and had returned to the farm house on the 29<sup>th</sup> May, 2020.*
7. *On the 3<sup>rd</sup> of June, 2020, the three (3) juveniles entered the complainant's property of which he was the caretaker, as trespassers to have a bath.*
8. *After each of them had a bath, the 3<sup>rd</sup> Juvenile went to the back of the farm removed two louver blades from a window at the back of the farm house and they all went inside.*
9. *While inside the three (3) juveniles stole assorted household items and left.*
10. *On the 14<sup>th</sup> of June, 2020, the complainant had gone to check on the farm house at around 10am and noticed that the farm house had been broken into. The complainant noticed that the two louver blades were removed from the rear window of the farm house which he believed to have been the point of entry.*
11. *Upon doing checks in the farm house, the complainant stated that the following items were stolen:*

a.	<i>1x straw mat valued at</i>	<i>\$50.00</i>
b.	<i>1x padlock with bunch of keys valued at</i>	<i>\$10.00</i>
c.	<i>1x mirror valued at</i>	<i>\$10.00</i>
d.	<i>1x black Nokia mobile phone and charger valued at</i>	<i>\$70.00</i>
e.	<i>1x solar light valued at</i>	<i>\$15.00</i>
f.	<i>2x vests valued at</i>	<i>\$50.00</i>
g.	<i>1x pink slippers valued at</i>	<i>\$20.00</i>
h.	<i>1x blue selfy stick valued at</i>	<i>\$40.00</i>
i.	<i>1x electric hair straightener valued at</i>	<i>\$200.00</i>
j.	<i>2x hair brush valued at</i>	<i>\$20.00</i>
k.	<i>1x spade valued at</i>	<i>\$30.00</i>
l.	<i>Assorted cosmetic valued at</i>	<i>\$100.00</i>
m.	<i>Lead wire valued at</i>	<i>\$50.00</i>

**TOTAL VALUE OF STOLEN ITEMS**

**\$665.00**

12. *The matter was reported to the police and investigations were carried whereby the three (3) juveniles were arrested and caution interviewed.*
13. *Upon being cautioned interviewed, the 1<sup>st</sup> Juvenile admitted that she had gone inside the house with the other two juveniles and stole items from the house [Q&A 46 – 51].*
14. *The 2<sup>nd</sup> Juvenile in her caution interviewed admitted she entered the house with the other two juveniles and stole items from the house [Q&A 61 – 68].*
15. *The 3<sup>rd</sup> Juvenile in his caution interview admitted that he removed the louver blades from the window and entered the house with the other two juveniles and stole items from the house [Q&A 45 – 61].*
16. *Items that have been stolen were recovered during the investigation. The following were the items that were recovered:*

a)	<i>1x straw mat valued at</i>	<i>\$50.00</i>
b)	<i>1x mirror valued at</i>	<i>\$10.00</i>
c)	<i>1x black Nokia mobile phone and charger valued at</i>	<i>\$ 70.00</i>
d)	<i>1x Solar light valued at</i>	<i>\$ 15.00</i>
e)	<i>2x vests valued at</i>	<i>\$50.00</i>
f)	<i>1x pink slippers valued at</i>	<i>\$20.00</i>
g)	<i>1x electric hair straightener valued at</i>	<i>\$200.00</i>
h)	<i>1x hair brush valued at</i>	<i>\$20.00</i>
i)	<i>1x spade valued at</i>	<i>\$30.00</i>
j)	<i>Assorted cosmetics valued at</i>	<i>\$100.00</i>

3. After considering the summary of facts read by the state counsel which was admitted by all the juveniles and upon reading their caution interviews, this court is satisfied that all the juveniles have entered an unequivocal plea of guilty on their own freewill.
4. This court is also satisfied that all 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 both the offences. All the juveniles also admitted committing the offences in the company of each other.

5. In view of the above, this court finds all the juveniles guilty as charged.
6. The learned counsel for all the juveniles presented the following mitigation and personal details:

JUVENILE ONE – A.A.A

- (a) The juvenile is 16 years of age at the time of the offending;
- (b) Year 11 student;
- (c) Financially supported by her maternal uncle;
- (d) Looked after by her maternal grandmother;
- (e) First time in conflict with the law;
- (f) Co-operated with the police;
- (g) Substantial recovery of stolen items;
- (h) Pleaded guilty at the earliest opportunity;
- (i) Remorseful and apologies for her actions;
- (j) Seeks leniency and mercy of the court.

JUVENILE TWO – T.F.N

- (a) The juvenile is 16 years of age;
- (b) She is financially supported by her parents;
- (c) School dropout but now wishes to resume studies from next year;
- (d) First time in conflict with the law;
- (e) Co-operated with the police;
- (f) Substantial recovery of stolen items;
- (g) Pleaded guilty at the earliest opportunity;
- (h) Remorseful and apologies for her actions;
- (i) Seek leniency and mercy of the court.

JUVENILE THREE – J.W.V

- (a) The juvenile is 15 years of age;
- (b) Lives with his parents;
- (c) First time in conflict with the law;

- (d) Co-operated with the police;
- (e) Substantial recovery of stolen items;
- (f) Pleading guilty at the earliest opportunity;
- (g) Remorseful and apologies for his actions;
- (h) Seek leniency and mercy.

#### REASONS FOR COMMITTING THE OFFENCES

7. The counsel for the juveniles in her written mitigation states that the juveniles committed the offences due to peer pressure and wrong decision making.

#### TARIFF

8. The maximum penalty of the offence of aggravated burglary is 17 years imprisonment.
9. 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)*).
10. For the offence of theft the maximum penalty is 10 years imprisonment.
11. 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.”*

12. All the juveniles fall under 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.

### **AGGRAVATING FACTORS**

The following aggravated factors are obvious:

- a) Property Invasion

The juveniles did not have any regard for the property rights of the owner. They entered the property without any second thoughts.

- b) Planning

There is a degree of planning involved the juveniles knew what they were doing. They were bold and undeterred.

### **SOCIAL WELFARE REPORT**

13. The Social Welfare Officers have prepared a comprehensive well thought out pre-punishment report for which this court is grateful. The reports from the Social Welfare Officers recommend the following;

- a) All the juveniles be given a second chance in life. They have parental and/ or family support which ought to continue;

- b) The juveniles are remorseful and they understand the consequences of their actions which they do not wish to repeat; and

- c) Counselling and community supervisors will be of assistance to the juveniles.

### **PARENTAL VIEW/SUPPORT**

14. The grandmother of first juvenile and the mothers of the second and third juveniles were present in court. The grandmother and the parents of the three juveniles take responsibility they are sorry for what has happened they are going to make sure the juveniles are properly supervised and do not repeat what has happened.

The grandmother and the parents of the juveniles are willing to sign a bond of \$300.00 each on behalf of the juveniles and are also willing to compensate the owner of the property by paying \$30.00 for each juvenile.

15. All the juveniles expressed remorse in court and were genuinely apologetic for what they had done. I am sure this experience was an eye opener for all of them. The third Juvenile has been detention for 2 weeks which is appropriate punishment already. The juveniles had to face their family and friends which has also contributed to a learning experience which has taught them to keep away from conflict with the law.

### **DETERMINATION**

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, police custody and/or detention 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 15 and 16

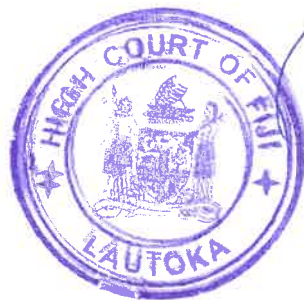
years of age at the time of the offending, pleaded guilty at the earliest opportunity, are genuinely remorseful, cooperated with police and they take full responsibility of their actions. These special reasons render immediate imprisonment inappropriate.

23. I am sure all 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 conflict with the law. 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 this punishment is just in all the circumstances of the case.
25. Let me remind all 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 all the juveniles to stop entering the world of uncertainty and lead a happy life with their parents, family members 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 the juveniles are given a punishment of 1 year and 10 months imprisonment as an aggregate punishment respectively 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) All the juveniles are given a punishment of 1 year and 10 months imprisonment respectively as an aggregate punishment for the two counts mentioned in the information which is suspended for 3 years with immediate effect;

- b) The grandmother and the parents of the juveniles are to sign a good behaviour bond on behalf of the juveniles in the sum of \$300.00 each. Furthermore, the grandmother and the parents of the juveniles are to pay the sum of \$30.00 for each juvenile as compensation to the victim within 21 days from today payable at the Magistrate's Court nearest to them;
- c) The Social Welfare Department is to immediately arrange for the counselling of all the juveniles in the presence of their grandmother and the 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 all the juveniles;
- e) It is the responsibility of the grandmother and the parents of all 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**

21 January, 2021

**Solicitors**

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

**Office of the Legal Aid Commission for all the Juveniles.**