

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

**Criminal Case No.: HAC 058 of 2022**

**STATE**

**V**

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

**Counsel** : Mr. M. Rafiq for the State.  
: Ms. S. Ali as Duty Solicitor for the Juvenile.

**Date of Submissions** : 06 July, 2022  
**Date of Punishment** : 11 July, 2022

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**PUNISHMENT**

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

1. The juvenile is charged by virtue of the following information filed by the Director of Public Prosecutions dated 15<sup>th</sup> May, 2022:

**FIRST COUNT**

***Statement of offence***

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

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

J.V.W and another in company of each other, on the 5<sup>th</sup> day of June, 2018 at Lautoka in the Western Division, entered into the building of BBQ CHICKEN (FIJI) LIMITED restaurant as trespassers with intent to commit theft therein.

### **SECOND COUNT**

#### ***Statement of offence***

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

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

J.V.W with another in company of each other, on the 5<sup>th</sup> day of June, 2018 at Lautoka in the Western Division, dishonestly appropriated 5 x bottles of assorted Wines and a Cash Register, being the properties of one BBQ CHICKEN (FIJI) LIMITED restaurant, with intent to permanently deprive BBQ CHICKEN (FIJI) LIMITED restaurant of their said properties.

2. On 20<sup>th</sup> June, 2022 the juvenile after informing the court that he will represent himself pleaded guilty to both counts. Thereafter on 4<sup>th</sup> July, 2022 the juvenile admitted the summary of facts read.
3. The summary of facts was as follows:
  1. *On 5<sup>th</sup> June, 2018 the complainant was informed by the Lautoka Police Station that they had received a report of a break-in at the BBQ Chicken Restaurant. The complainant then lodged a formal complaint whereby CCTV Footage was obtained from the BBQ Chicken Restaurant.*
  2. *Upon viewing the recording in the CCTV footage, Actg. D/Sgt. 3154 Aliki saw two Itaukei boys entering the premises of the BBQ Chicken*

*Restaurant. Sgt Aliko immediately identified the two Itaukei boys, one as "J. V" and another.*

- 3. A police officer from the Lautoka Police Station namely, Manaisi Likuivalu, was then instructed by IP Operations to arrest the juvenile. The juvenile was located and arrested by Woman Constable Ateca at Yasawa Street in Lautoka City.*
- 4. The juvenile was brought to the Lautoka Police Station for questioning whereby, during his caution interview he made the following admissions;*
  - a. That on the 5<sup>th</sup> day of June, 2018 sometime after 3.53 am, the juvenile had forcefully pushed the door of the BBQ chicken shop whereby it opened since the chain on the door was loose.*
  - b. That after the juvenile pushed the door open, he entered the BBQ Chicken Restaurant, followed by another.*
  - c. That upon entering the premises of BBQ Chicken Restaurant, the juvenile in the company of another stole some bottles of assorted wine and a cash register from inside the BBQ Chicken Restaurant.*
  - d. The juvenile admitted sharing the assorted wine with some men who were outside on the street and further admitted that he, in the company of another threw the cash Register in the sea over the seawall at Marine Drive, Lautoka. The record of interview of the juvenile was marked as annexure A". The juvenile was then formally charged.*
- 4. 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 freewill.*

5. This court is also satisfied that the juvenile has fully understood the nature of the charges and the consequences of pleading guilty. The summary of facts admitted satisfies all the elements of the offences committed. The juvenile admitted committing the offences in the company of another.
6. In view of the above, this court finds the juvenile guilty as charged. Both counsel filed punishment and mitigating submissions for which this court is grateful.
7. The learned counsel for the juvenile presented the following mitigation and personal details:
  - a) The juvenile was 15 years of age at the time;
  - b) Young offender in conflict with the law;
  - c) Resided with his parents and three siblings;
  - d) Co-operated with the police;
  - e) Pleaded guilty at the earliest opportunity;
  - f) Remorseful and apologizes for his actions;
  - g) Seeks forgiveness from the court;
  - h) Promises not to reoffend.

#### **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.*

### **AGGRAVATING FACTORS**

12. The following aggravating factors are obvious:

- a) Property Invasion

The juvenile did not have any regard for the property rights of the owner. The offence was committed in the central business division of Lautoka City during the early hours of the morning. He was bold and undeterred in what he did in the company of another.

b) Prevalence of the offence

There has been an increase in this type of offending.

13. The juvenile falls under special categorization than adults 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.

**SOCIAL WELFARE REPORT**

14. Since the juvenile is now 19 years of age no order was made for the Social Welfare Department to prepare a report which would not have served any purpose.

**DETERMINATION**

15. It is noted that the juvenile is serving a sentence of 2 years, 3 months and 11 days for one count of the following offences namely failure to comply with orders and burglary and two counts of theft.

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 both counts. Considering the

objective seriousness of the offences committed I select 18 months imprisonment (lower range of the tariff) as the aggregate punishment for both counts. The punishment is increased for the aggravating factors, but reduced for mitigation and early guilty plea. The juvenile is currently a serving prisoner and there is no remand period to be taken into account.

18. The final aggregate punishment for both counts 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.
19. 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."*

20. 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 term or a suspended punishment.
21. The juvenile is a young person as per the Juveniles Act (15 years of age at the time of the offending), of good character, isolated offences were committed by him, he has pleaded guilty at the earliest opportunity, is remorseful, cooperated with police and he takes full responsibility of his actions. These special reasons render an immediate imprisonment term inappropriate.
23. The juvenile is now an adult and not a first offender he has previous convictions arising from the allegations of 10<sup>th</sup> and 11<sup>th</sup> June, 2021 for which he is now serving, however, it must not be forgotten that this alleged incident took place on 5<sup>th</sup> June, 2018 and he was only charged this year and brought before this court. It would be unfair to impose a custodial sentence on this basis.
24. In view of the above, this court has no option but to give the juvenile another chance at rehabilitation. Section 30 (3) of the Juveniles Act also imposes a limit on the punishment of young persons.
25. Having considered section 4 (1) of the Sentencing and Penalties Act this court is of the view that the suspended punishment is just in all the circumstances of this case.



26. In summary the juvenile is given a punishment of 1 year and 10 months imprisonment as an aggregate punishment for both counts which is suspended for 3 years. The effect of the suspended term is explained to the juvenile. 30 days to appeal to the Court of Appeal.



**Sunil Sharma**  
**Judge**

**At Lautoka**

11 July, 2022

**Solicitors**

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

**Juvenile in person.**