

IN THE HIGH COURT OF FIJI

AT LAUTOKA

[CRIMINAL JURISDICTION]

CRIMINAL CASE NO: HAC 011 of 2022

STATE

V

- 1. CLIFF DOUGLAS**
- 2. SACHIN PRASAD**
- 3. AWAL AVISHEEL KUMAR**
- 4. MESAKE MATAI**

Counsel: Ms. Sheenal Swastika for the State
Ms. Karen Boseiwaqa for the 1st Accused
Mr. Rajshneel Chand for the 2nd Accused
Ms. Salote Veitokiyaki for the 3rd Accused
Ms. Shaheen Ali for the 4th Accused

Sentence Hearing: 11 August 2022

Sentence: 20 September 2022

SENTENCE

[1] Cliff Douglas, Sachin Prasad, Awal Avisheel Kumar and Mesake Matai, as per the Information filed by the Director of Public Prosecutions (DPP), the four of you were charged, with the following offences:

COUNT ONE

Statement of Offence

BURGLARY: Contrary to Section 312 of the Crimes Act 2009.

Particulars of Offence

CLIFF DOUGLAS, between the 1st of June 2021 and the 30th June 2021, at Enamanu Road, Nadi, in the Western Division, entered into the dwelling house of Steven Naidu, as a trespasser, with intent to commit theft.

COUNT TWO

Statement of Offence

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

Particulars of Offence

CLIFF DOUGLAS, between the 1st of June 2021 and the 30th June 2021, at Enamanu Road, Nadi, in the Western Division, stole 3 x Grills, 2 x Lights and 2 x Door Handles, the property of Steven Naidu with the intention to permanently deprive Steven Naidu of the said properties.

COUNT THREE

Statement of Offence

BURGLARY: Contrary to Section 312 of the Crimes Act 2009.

Particulars of Offence

CLIFF DOUGLAS, between the 1st of August 2021 and the 31st of August 2021, at Enamanu Road, Nadi, in the Western Division, entered into the dwelling house of Steven Naidu, as a trespasser, with intent to commit theft.

COUNT FOUR

Statement of Offence

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

Particulars of Offence

CLIFF DOUGLAS, between the 1st of August 2021 and the 31st of August 2021, at Enamanu Road, Nadi, in the Western Division, stole a Red Wheelbarrow and 7 Tins of House Paint, the property of Steven Naidu with the intention to permanently deprive Steven Naidu of the said properties.

COUNT FIVE

Statement of Offence

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

Particulars of Offence

SACHIN PRASAD and AWAL AVISHEEL KUMAR, between the 17th of April 2021 and the 25th of May 2021, at Enamanu Road, Nadi, in the Western Division, entered into the dwelling house of Steven Naidu, as trespassers, with the intention to commit theft.

COUNT SIX

Statement of Offence

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

Particulars of Offence

SACHIN PRASAD and AWAL AVISHEEL KUMAR, between the 17th of April 2021 and the 25th of May 2021, at Enamanu Road, Nadi, in the Western Division, stole 3 x Maxton Air Condition Units, 5 x Doors, 1 x Range Hood, 1 x Hand Basin and tap, 1 x Mirror, 1 x Instant Electric Heater and Shower rose, 1 x Kitchen tap, 1 x Ceiling fan, Assorted Down lights, Assorted Louver blades, 8 x Power points, Assorted Kitchen Carcass and Drawers, the property of Steven Naidu with the intention to permanently deprive Steven Naidu of the said properties.

COUNT SEVEN

Statement of Offence

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

Particulars of Offence

SACHIN PRASAD, AWAL AVISHEEL KUMAR and MESAKE MATAI, on the 3rd of August 2021, at Enamanu Road, Nadi, in the Western Division, entered into the dwelling house of Steven Naidu, as trespassers, with the intention to commit theft.

COUNT EIGHT

Statement of Offence

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

Particulars of Offence

SACHIN PRASAD, AWAL AVISHEEL KUMAR and MESAKE MATAI, on the 3rd of August 2021, at Enamanu Road, Nadi, in the Western Division, stole 3 x Recliner Settee, 2 x Single Bed Frame, 1 x King Bed Frame and Mattress, 1 x Ironing Board, 1 x Single Sponge Mattress, 1 x Microwave, 1 x Blender, Assorted Kitchen Utensils, Assorted Beddings and Pillows, 1 x Carpet, 1 x Radio, 1 x Toilet Pan & Cistern, 1 x Tap and Shower, 1 x Tap and Hand Basin and 1 x Door with lock, the property of Steven Naidu with the intention to permanently deprive Steven Naidu of the said properties.

- [2] On 28 February 2022, the DPP filed Information in the matter, while the Disclosures relevant to the case were served on the four of you on 9 March 2022 and subsequently filed in Court.
- [3] On 31 March 2022, you were ready to take your pleas. Accordingly, on that day Cliff Douglas, you pleaded guilty to the four counts against you in the Information (Counts 1-4); while Sachin Prasad and Awal Avisheel Kumar, you pleaded guilty to the four counts against you in the Information (Counts 5-8). 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 guilty plea.
- [4] Mesake Matai, when your plea was taken on 31 March 2022, you pleaded guilty to Count 7, in the Information, but pleaded not guilty to Count 8. However, when the matter was called next on 25 April 2022, you pleaded guilty to both counts you are charged with. 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 guilty plea.
- [5] Thereafter, on 17 May 2022, the State filed the Summary of Facts, while on 14 July 2022, the State filed an Amended Summary of Facts. The Amended 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 respective counts in the Information, and found the eight counts proved on the Summary of Facts agreed by you. Accordingly, Cliff Douglas, I found you guilty on your own plea and I convicted you of Counts 1-4; Sachin Prasad and Awal Avisheel Kumar, I found you guilty on your own pleas and I convicted you of Counts 5-

8; and Mesake Matai, I found you guilty on your own plea and I convicted you of Counts 7 and 8.

[6] I now proceed to pass sentence on the four of you.

[7] The Amended Summary of Facts filed by the State was as follows:

BACKGROUND

Accused 1: Cliff Douglas, 46 years old of Enamanu Road, Nadi, Unemployed.

Accused 2: Sachin Prasad, 38 years old of Enamanu Road, Nadi, Fisherman.

Accused 3: Awal Avisheel Kumar, 24 years old of Enamanu Road, Nadi, Farmer.

Accused 4: Mesake Matai, 38 years old of Enamanu Road, Nadi, Surveyor.

Complainant: Steven Naidu, 51 years old of Tamavua, Suva, Businessman.

There is no relationship between the accused persons and the complainant, however, according to Police investigation all accused persons reside in the same neighborhood.

CHARGE

- 1. The accused person Cliff Douglas is charged with two counts of Burglary and two counts of Theft.*
- 2. Cliff Douglas has pleaded guilty to counts 1 to 4.*
- 3. Sachin Prasad and Awal Avisheel Kumar are charged with two counts of Aggravated Burglary and (two counts of) Theft.*
- 4. Sachin Prasad and Awal Avisheel Kumar have pleaded guilty to counts 5 to 8.*
- 5. Mesake Matai is charged with one count of Aggravated Burglary and (one count of) Theft. He had pleaded guilty to counts 7 and 8.*

OFFENCE

- 6. On the 3rd of August 2021, an anonymous call was made to the Nadi Police Station that a break-in was in progress at Enamanu Road, Nadi.*
- 7. Upon receiving this report, the Police Officers then proceeded to the complainant's residence and saw that the door of the house was open and items were removed from the premises.*

8. The team then conducted enquiry in the same neighborhood and found out that one Sachin had broken into the said house. Upon reaching Sachin's house it was noted that one Awal Kumar was also involved in the burglary.
9. PC 5655 Iliesa then arrested Sachin and later arrested Awal Kumar. After arrest of these two accused persons, 1 x Mattress was recovered from Awal's place. From Sachin's residence the team proceeded to Mesake's place where other items were found. Mesake then got cautioned and was arrested. Information obtained from Sachin led to the arrest of Cliff Douglas.
10. According to the complainant the following items were stolen:

Items Stolen by Cliff Douglas	Amount	Recovery	Item locations when found
Counts 1 to 4			
1) 3 x Grills	\$1,000.00	√	Found at Aiyaz Ahmed's Place
2) 2 x Lights	\$120.00	√	
3) 2 x Door Handles	\$10.00	√	
4) 1 x Red Wheel barrow	\$150.00	√	Recovered at Sachin Prasad's (A2) House
5) 7 x Tins House Paint	\$140.00	√	Few tins were recovered from Cliff Douglas (A1) residence
TOTAL	\$1,420.00	\$1,420.00 (Recovery)	
Items stolen by Sachin Prasad & Awal Avisheel Kumar			
Counts 5 and 6			
6) 3 x Maxton Air Condition Units	\$7,500.00	1 unit recovered (\$2,500.00)	1 unit recovered at Aiyaz Ahmed's place
7) 5 x Doors	\$2,500.00	√	(A2)'s place
8) 1 x Range hood	\$700.00	√	
9) 1 x Hand Basin & tap	\$500.00	√	
10) 1 x Mirror	\$100.00	√	
11) Instant Electric Heater & Shower rose	\$300.00	√	Found at Tokasa Ratu's place
12) 1 x Kitchen tap	\$300.00	√	(A2)'s place
13) 1 x Ceiling fan	\$800.00	√	
14) Assorted down lights	\$30.00	×	×

15)	Assorted Louver blades	\$300.00	x	x
16)	8 x Power points	\$8.00	√	(A2)'s place
17)	Assorted Kitchen Carcass Drawers	\$20,000.00	√	Found at Sachin Prasad's place. Same has been removed from his place.
TOTAL		\$33,038.00	\$27,708.00	(Recovery)
Items stolen by Sachin Prasad, Awal Avisheel Kumar & Mesake Matai				
Counts 7 and 8				
18)	3 x Recliner Settee	\$3,000.00	√	(A2)'s place
19)	2 x Single Bed Frame	\$5,150.00	√	(A3)'s place
20)	1 x King Bed Frame & Mattress		√	
21)	1 x Single Sponge Mattress		√	
22)	1 x Ironing Board	\$250.00	√	Found at Tokasa Ratu's place
23)	1 x Microwave	\$700.00	√	(A2)'s place
24)	1 x Blender	\$300.00	x	x
25)	Assorted Kitchen Utensils, Assorted Beddings and Pillows	\$700.00	√	(A2)'s place
26)	1 x Carpet	\$100.00	√	√
27)	1 x Radio	\$100.00	√	(A2)'s
28)	1 x Toilet Pan & Cistern	\$800.00	x	x
29)	1 x Tap & Shower	\$500.00	√	(A2)'s house
30)	1 x Tap & Hand Basin	\$700.00	√	
31)	1 x Door with lock	\$1,500.00	√	(A3)'s house
TOTAL		\$13,800.00	\$12,700.00	(Recovery)

11. Total value of the items stolen is \$48,258.00.

Total recovery pertaining:

- 1st Accused Cliff Douglas is \$1,420.00.
- 2nd and 3rd Accused Sachin Prasad and Awal Avisheel Kumar is \$27,708.00.
- 4th Accused Mesake Matai is \$12,700.00.
- Total amount of recoveries in this matter is \$41,828.00.

CAUTION INTERVIEW AND THE CHARGE

The Accused persons were interviewed under caution.

12. *Cliff Douglas had admitted that he entered Steven Naidu's house and stole 7 x 4 litre paint, 1 x Wheel barrow, 3 x Grills, 2 x Hanging lights and 1 x Door Handle. He also admitted that he gained access to the house by climbing the fence and that he knew the house was vacant. (Caution interview of Cliff Douglas is annexed as TAB A) (Admissions have been made from question and answer 37 to 81).*
13. *Sachin Prasad has admitted that he stole 3 x Maxton Air Condition Units, 5 x Doors, 1 x Range hood, 1 x Hand basin and tap, 1 x Mirror, 1 x Instant Electric Heater and Shower rose, 1 x Kitchen tap, 1 x Ceiling fan, Assorted down lights, Assorted louver blades, 8 x Power points, Assorted Kitchen Carcass and Drawers. (Caution interview of Sachin Prasad is annexed as TAB B) (Admissions have been made from question and answer 29 to 114).*
14. *He also admitted that he installed the whole kitchen carcass and 2 doors and cupboard in his own house after stealing it. He also admitted that he gained access to the house by climbing the fence and entered through the door which was open.*
15. *Awal Avisheel Kumar admitted to stealing the items with Sachin, however only kept the bed and mattresses. He also admitted to removing the ceiling fan. (Caution interview of Awal Avisheel Kumar is annexed as TAB C) (Admissions have been made from question and answer 32 to 95).*
16. *Mesake Matai has admitted stealing 2 x single mattresses, 1 x tool box, 1 x quicksilver bag, 1 x Ironing Board, 1 x basket clothes, 2 x Blankets and assorted tiles. He also admitted that he gained access to the house by climbing the fence and entered through the window by removing the louvers. He admitted that he was in the company of Sachin and Awal. (Caution interview of Mesake Matai is annexed as TAB D) (Admissions have been made from question and answer 44 to 88).*

[8] Cliff Douglas, Sachin Prasad, Awal Avisheel Kumar and Mesake Matai, you have admitted to the above Amended Summary of Facts and taken full responsibility for your actions.

[9] 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.

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

[11] 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 Burglary in terms of Section 312 (1) of the Crimes Act carries a maximum penalty of 13 years imprisonment.

[12] It has been held that the tariff for the offence of Burglary is the same as the tariff for Aggravated Burglary, which is between 18 months to 3 years imprisonment.

[13] 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)”

As stated earlier, the offence of ‘Burglary’ is defined at Section 312 (1) of the Crimes Act.

The offence of Aggravated Burglary in terms of Section 313 (1) of the Crimes Act carries a maximum penalty of 17 years imprisonment.

[14] 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).

[15] 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.

[16] 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); *State v. (Taniela) Tabuakula* [2020] FJHC 464; HAC106.2020 (23 June 2020); *State v. (Eric Male) Robarobalevu* [2020] FJHC 630; HAC102.2020 (6 August 2020); *State v. (Usaia) Delai* [2020] FJHC 631; HAC7.2020 (6 August 2020); *State v Vakawaletabua* [2020] FJHC 645; HAC441.2018 (11 August 2020); *State v. (Sakeasi) Seru and Another* [2020] FJHC 770; HAC136.2020 (18 September 2020); *State v. (Kunal Edwin) Prasad* [2020] FJHC 785; HAC115.2020 (23 September 2020); *State v. (Emosi) Tabuasei* [2020] FJHC 994; HAC131.2020 (27 November 2020); *State v. LR and Others* [2020] FJHC 993; HAC133.2020 (27 November 2020); *State v. Lal and Another* [2020] FJHC 1024; HAC337.2019 (3 December 2020); *State v. Koroitawamudu and Another* [2020] FJHC 1055; HAC127.2020 (8 December 2020); *State v. Koroii and Another* [2020] FJHC 1065; HAC270.2020 (10 December 2020); *State v. (Joji) Kotobalavu* [2021] FJHC 101; HAC234.2020 (17 February 2021); *State v. Nabou Junior* [2021] FJHC 172; HAC277.2020 (22 March 2021); *State v. Nabou Junior* [2021] FJHC 173; HAC277.2020 (22 March 2021); *State v. Lutunamaravu & Others* [2021] FJHC 191; HAC192.2020 (23 March 2021); *State v. (Aminiasi) Vakalala & Another* [2021] FJHC 195; HAC325.2020 (25 March 2021); *State v. Lal* [2021] FJHC 247; HAC337.2019 (5 October 2021); *State v. Kaibalauma and Another* [2021] FJHC 349; HAC59.2021 (1 December 2021); and *State v. Senikaboa and Others* [2021] FJHC 416; HAC237.2020 (17 December 2021); *State v. Prasad & Another* [2022] FJHC 70; HAC115.2020 (11

February 2022); **State v. Pita Nanumi** HAC77.2021 (14 June 2022); and **State v. Rafaele Tuibucabuca** HAC152.2019 (26 August 2022).

[17] 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.

[18] 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.”

[19] Since the theft in this case involved property of a high value, and was consequent to the four of you entering a dwelling house 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.

[20] 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.”

[21] In the light of the above guiding principles, and taking into consideration the objective seriousness of the offences, Cliff Douglas, I commence your sentence at 18 months imprisonment for the first and third counts of Burglary. Sachin Prasad and Awal Avisheel Kumar, I commence your sentences at 18 months imprisonment for the fifth and

seventh counts of Aggravated Burglary. Mesake Matai, I commence your sentence at 18 months imprisonment for the seventh count of Aggravated Burglary.

[22] Similarly, in the light of the above guiding principles, and taking into consideration the objective seriousness of the offences, Cliff Douglas, I commence your sentence at 6 months imprisonment for the second and fourth counts of Theft. Sachin Prasad and Awal Avisheel Kumar, I commence your sentences at 6 months imprisonment for the sixth and eighth counts of Theft. Mesake Matai, I commence your sentence at 6 months imprisonment for the eighth count of Theft.

[23] The aggravating factors are as follows:

- (i) The frequent prevalence of these offences in our society today.
- (ii) The four of you knew very well that the complainant's house was vacant. Therefore, I find that there was some degree of pre-planning or pre-meditation on your part in committing these offences.
- (iii) The four of you trespassed into a residential premises (a dwelling house) thereby paying complete disregard to the privacy and property rights of its owners. Since you all reside in the same neighbourhood, there has clearly been a breach of neighbourly trust.
- (iv) The four of you have caused damage to the stolen items. Even though most of the stolen items were recovered, the said items were not in the same condition as they were at the time of the offending.
- (v) As per the Victim Impact Statement filed in Court, it is recorded that the complainant (and his wife) have been emotionally and psychologically disturbed and harmed by your actions.
- (vi) You committed these offences at a time the entire country was facing economic hardship due to the coronavirus pandemic.
- (vii) Cliff Douglas, Sachin Prasad and Awal Avisheel Kumar you trespassed multiple times into the same premises. As such, you are now convicted of multiple offending.

[24] In mitigation you have submitted as follows:

- (i) That you all are first offenders 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 all 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 remorseful and regret your actions. You have promised not to re-offend.
- (iv) You have submitted that most of the stolen items were recovered.
- (v) That you all entered guilty pleas at the earliest opportunity during these proceedings.

[25] Considering the aforementioned aggravating factors, Cliff Douglas, I increase your sentences by a further 5 years. Now your sentences for counts one and three would be 6 years and 6 months imprisonment. Your sentence for counts two and four would be 5 years and 6 months imprisonment.

[26] Considering the aforementioned aggravating factors, Sachin Prasad and Awal Avisheel Kumar, I increase your sentences by a further 5 years. Now your sentences for counts five and seven would be 6 years and 6 months imprisonment. Your sentences for counts six and eight would be 5 years and 6 months imprisonment.

[27] Considering the aforementioned aggravating factors, Mesake Matai, I increase your sentences by a further 4 years. Now your sentence for count seven would be 5 years and 6 months imprisonment. Your sentence for count eight would be 4 years and 6 months imprisonment.

[28] Cliff Douglas, Sachin Prasad, Awal Avisheel Kumar and Mesake Matai, I accept that you are all 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. I also acknowledge the fact that most of the stolen items had been recovered. Accordingly, considering the said mitigating factors, I deduct 2 years and 6 months from your sentences.

[29] Cliff Douglas, now your sentences for counts one and three would be 4 years imprisonment. Your sentences for counts two and four would be 3 years imprisonment. Sachin Prasad and Awal Avisheel Kumar, now your sentences for counts five and seven would be 4 years imprisonment. Your sentences for counts six and eight would be 3 years imprisonment. Mesake Matai, now your sentence for count seven would be 3 years imprisonment. Your sentence for count eight would be 2 years imprisonment.

[30] I accept that you all entered guilty pleas 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 all counts.

[31] In the circumstances, Cliff Douglas your sentences are as follows:

Count 1- Burglary contrary to Section 312 of the Crimes Act- 3 years' imprisonment.

Count 2- Theft contrary to Section 291 (1) of the Crimes Act- 2 years' imprisonment.

Count 3- Burglary contrary to Section 312 of the Crimes Act- 3 years' imprisonment.

Count 4- Theft contrary to Section 291 (1) of the Crimes Act- 2 years' imprisonment.

I order that all sentences of imprisonment to run concurrently. Therefore, your final total term will be 3 years' imprisonment.

[32] In the circumstances, Sachin Prasad your sentences are as follows:

Count 5- Aggravated Burglary contrary to Section 313 (1) (a) of the Crimes Act- 3 years' imprisonment.

Count 6- Theft contrary to Section 291 (1) of the Crimes Act- 2 years' imprisonment.

Count 7- Aggravated Burglary contrary to Section 313 (1) (a) of the Crimes Act- 3 years' imprisonment.

Count 8- Theft contrary to Section 291 (1) of the Crimes Act- 2 years' imprisonment.

I order that all sentences of imprisonment to run concurrently. Therefore, your final total term will be 3 years' imprisonment.

[33] In the circumstances, Awal Avisheel Kumar your sentences are as follows:

Count 5- Aggravated Burglary contrary to Section 313 (1) (a) of the Crimes Act- 3 years' imprisonment.

Count 6- Theft contrary to Section 291 (1) of the Crimes Act- 2 years' imprisonment.

Count 7- Aggravated Burglary contrary to Section 313 (1) (a) of the Crimes Act- 3 years' imprisonment.

Count 8- Theft contrary to Section 291 (1) of the Crimes Act- 2 years' imprisonment.

I order that all sentences of imprisonment to run concurrently. Therefore, your final total term will be 3 years' imprisonment.

[34] In the circumstances, Mesake Matai your sentences are as follows:

Count 7- Aggravated Burglary contrary to Section 313 (1) (a) of the Crimes Act- 2 years' imprisonment.

Count 8- Theft contrary to Section 291 (1) of the Crimes Act- 1 years' imprisonment.

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

[35] Cliff Douglas, you are now 47 years of age [Your date of birth being 28 November 1974]. You are said to be separated from your wife. You have 4 children aged 24, 22, 20 and 18 years. Your two elder children are said to be working in Suva, while your third child is with your wife and attending University. Your youngest child is said to be in Form 7 and you are providing for his education. You are said to be a fisherman by occupation earning \$45.00 per week.

[36] You have submitted that you were facing dire financial constraints and due to that fact you had resorted to committing these offences, which you now sincerely regret. You submit that you should have known better and that your actions have been a huge burden and shame on you as you are now seen negatively by your neighbours and community.

[37] Sachin Prasad, you are now 39 years of age [Your date of birth being 26 August 1983]. You are married with two children – a son aged 17 years and daughter aged 4 years. Your son is currently studying in High School. You are said to be a fisherman by occupation earning \$50.00 per week. You say that you are the sole breadwinner of your family.

[38] You have submitted that you were having very hard times during the coronavirus pandemic and had no source of income, which forced you to commit these offences. You say that you are sincerely remorseful of your actions.

[39] Awal Avisheel Kumar, you are now 25 years of age [Your date of birth being 4 November 1996]. You are said to be single and staying with your mother at Navakai, Nadi from birth to date. You had lost your father at a young age and had been under the guidance of your mother and two older sisters.

[40] You are said to be working as an Electrician. After leaving High School you had been employed with Power Run Electrical. However, you had to leave work after suffering a

fall from a building. A copy of your medical report has been submitted to Court to confirm the nature of your illness. You are now said to be employed as an Electrician with Jens Lamp and Lighting Works earning approximately \$200.00 per week.

- [41] You are said to be sincerely remorseful of your actions and regrets what you did. You are seeking leniency from this Court and have promised not to re-offend.
- [42] Mesake Matai, you are now 38 years of age [Your date of birth being 29 April 1983]. You are said to be married with two children aged, 8 years and 5 years. You are said to be a grass-cutter by occupation earning approximately \$40 to \$50 per week. You are said to be the sole breadwinner of your family.
- [43] You have admitted that you made a wrong decision when committing these offences which you now regret. You are said to have asked forgiveness from the complainant as you have realized the effects of your actions. You are seeking leniency from this Court and have promised not to re-offend.
- [44] You have also submitted a reference from the Riopoci Methodist Church in Nadi. It is stated therein that you have been a church member for the past 3 years. Although you have been charged for an offence, it is stated that the church has been visiting you so that you will not be involved in any criminal activity in the future.
- [45] Cliff Douglas, Sachin Prasad, Awal Avisheel Kumar and Mesake Matai, in considering the sentence to be imposed on you, I have also to take into consideration the factors that have been stated in Section 4(1) of the Sentencing and Penalties Act. The purpose of sentencing is primarily to punish offenders to an extent and in a manner which is just in all the circumstances, to protect the community, to deter offenders or other persons from committing offences of the same or similar nature and to signify that the court and the community denounce the commission of such offences.
- [46] As per the Victim Impact Statement filed by the State, it is apparent that the complainant and his wife have been emotionally and psychologically harmed by your actions. They have stated as follows:

"This particular property was set up as a second home for our every visit to the West. It was designed and set up to suit our lifestyle and used as our holiday home for the past 10 years. We had always looked forward to our trips (to the West) considering the convenience of having a place to stay like home. After the incident, we now have a fear of staying at the premises openly and do not feel safe anymore. This has forced us to make a decision to sell the property which we never intended to and always seen as our retirement residence. The decision has been very heart breaking for the family. As it is, we were going through financial crisis due to Covid 19 and due to the lockdown, we were not able to visit the property and protect it from the incident for many months."

[47] Therefore, considering all the facts and circumstances of this case, the nature and gravity of the offending, your culpability and degree of responsibility for the offending and the impact of the offending on the complainant and his family, you are not entitled to a lenient sentence. The sentence to be imposed on you must signify Court's denunciation of your conduct and be a deterrence to you and other similar persons from committing offences of the same or similar nature in the future.

[48] Accordingly, Cliff Douglas, Sachin Prasad and Awal Avisheel Kumar, I sentence each of you to a term of 3 years' imprisonment. Pursuant to the provisions of Section 18 of the Sentencing and Penalties Act, I fix your non-parole period as 2 years' imprisonment. Mesake Matai, I sentence you to a term of 2 years' imprisonment. Pursuant to the provisions of Section 18 of the Sentencing and Penalties Act, I fix your non-parole period as 1 years' imprisonment.

[49] Section 24 of the Sentencing and Penalties Act reads thus:

"If an offender is sentenced to a term of imprisonment, any period of time during which the offender was held in custody prior to the trial of the matter or matters shall, unless a court otherwise orders, be regarded by the court as a period of imprisonment already served by the offender."

[50] I find that the four of you were arrested for this case on 4 August 2021 and produced in Court on 6 August 2021. You were all granted bail by the Magistrate's Court on the same day. Therefore, you have spent only two days in police custody and have not spent a single day in remand custody. As such, I cannot consider any period of time as served in terms of the provisions of Section 24 of the Sentencing and Penalties Act.

[51] In the result, Cliff Douglas your final sentence is as follows:

Head Sentence - 3 years' imprisonment.
Non-parole period - 2 years' imprisonment.

[52] In the result, Sachin Prasad your final sentence is as follows:

Head Sentence - 3 years' imprisonment.
Non-parole period - 2 years' imprisonment.

[53] In the result, Awal Avisheel Kumar your final sentence is as follows:

Head Sentence - 3 years' imprisonment.
Non-parole period - 2 years' imprisonment.

[54] In the result, Mesake Matai your final sentence is as follows:

Head Sentence - 2 years' imprisonment.

Non-parole period - 1 years' imprisonment.

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



Riyaz Hamza

JUDGE

HIGH COURT OF FIJI

AT LAUTOKA

Dated this 20th Day of September 2022

Solicitors for the State:	Office of the Director of Public Prosecutions, Lautoka.
Solicitors for the 1st Accused:	Office of the Legal Aid Commission, Lautoka.
Solicitors for the 2nd Accused:	Messrs JK Singh & Lawyers, Nadi
Solicitors for the 3rd Accused:	Messrs Babu Singh & Associates, Nadi.
Solicitors for the 4th Accused:	Office of the Legal Aid Commission, Lautoka.