

IN THE HIGH COURT OF FIJI
AT SUVA
[CRIMINAL JURISDICTION]

CRIMINAL CASE NO. HAC 158 OF 2021

BETWEEN : STATE

AND : NISCHAL ROY
KINISIANA NAIROGO DAKUNIMARAMA

Counsel : Mr Bainivalu for the State
1st Accused in Person
Ms L Ratidara for the 2nd Accused

Date of Hearing : 24 March 2023

Date of Sentence : 24 March 2023

SENTENCE

- [1] The two accused are in a de-facto relationship. They have pleaded guilty to one count each of aggravated burglary and theft. Both offences are part of one transaction and are based on the same facts.
- [2] On 3 August 2021, both accused planned to commit a theft. They went to Swami Shradanand Memorial School to execute their plan. At the time the school was closed due to Covid-19. The first accused entered the school premises while the second accused waited outside to act as a lookout. The entry to the building was made by breaking the grill door. He removed a flat screen TV, four computer screens and some learning kits from the school office and the library. Both accused carried the stolen items and sold them to third parties. When the school discovered the burglary and theft they reported it to the police. Both accused were arrested and interviewed under caution. The first accused made full admissions.

The second accused made partial admission. All stolen properties were recovered and are currently held as exhibits.

- [3] The maximum penalty for aggravated burglary is 17 years imprisonment. The maximum penalty for theft is 10 years imprisonment. Recently, in *Kumar & Vakatawa v State* Criminal Appeals No AAU33 of 2018 and AAU117 of 2019, the Court of Appeal has set out guidelines for sentencing in aggravated burglary cases, which I adopt in this case.
- [4] The Kumar guidelines require the sentencing court to first assess the level of harm caused by the offence and then determine the applicable starting point and sentencing range. In this case, the level of harm is low and the applicable starting point is 3 years imprisonment and the sentencing range is 1-5 years imprisonment. The stolen properties have been recovered and can be restored to the victim.
- [5] The statutory aggravation is that the offence was committed in a company. The CCTV footage shows that the first accused used the Covid-19 mask to conceal his identity. An education institution for primary children was burgled. The grill door of the school office was damaged to gain entry.
- [6] Both accused have pleaded guilty (although late). They have saved court's trial time and resources.
- [7] At the time of the offence the first accused was 29 years old and unemployed. He has relevant convictions for similar offences.
- [8] The second accused is 24 years old and a first time offender. She has a child with the first accused. The child is in Year 2 and is being looked after by her family. Her role in the commission of the offence was minimum. The first accused had a principal role.
- [9] For both accused I use the same starting point of 3 years imprisonment.

[10] After adjusting the sentence to reflect the aggravating and mitigating factors both accused are convicted and sentenced to an aggregate sentence as follows:

First accused – 2 years imprisonment.

Second accused – 12 months imprisonment.

[11] The first accused has already spent about five months in custody on remand. The remaining term for him to serve is 19 months imprisonment. Suspension is inappropriate. He has similar previous convictions and the main purpose of sentence in his case is personal deterrence in order to keep the community safe.

[12] The second accused has already spent about 9 months in custody on remand. The remaining term for her to serve is 3 months. With the remissions for good behaviour she is considered to have served her sentence. She is to be released from prison forthwith.

[13] Recovered stolen items are restored to the owner, Swami Shradanand Memorial School.



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Hon. Mr Justice Daniel Goundar

Solicitors:

Office of the Director of Public Prosecutions for the State

1st Accused in Person

Legal Aid Commission for the 2nd Accused