

IN THE HIGH COURT OF FIJI

AT SUVA

CRIMINAL JURISDICTION

CRIMINAL CASE NO. HAC 281 OF 2021S

STATE

VS

JOJI KOTOBALAVU

Counsels : Ms. N. Ali for State.
Accused in Person
Hearings : 11 and 24 November, 2022.
Sentence : 5 May, 2023.

SENTENCE

1. On 11 November 2022, the following two counts in the following information, was read over and explained to you:

“Count 1

Statement of Offence

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

Particulars of Offence

JOJI KOTOBALAVU & ELIJAH SERU *between the 6th day of June, 2021 and the 7th day of June, 2021 at Lami in the Central Division, in the company of others, entered into the premises of **CAPITANO RESTAURANT**, as trespassers, with intent to commit theft therein.*

Count 2

Statement of Offence

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

Particulars of Offence

JOJI KOTOBALAVU & ELIJAH SERU *between the 6th day of June, 2021 and the 7th day of June, 2021 at Lami in the Central Division, in the company of others, dishonestly appropriated (stole) 1 x Sony Brand Bluetooth speaker set and 1 x Makita Drop Saw, the properties of **CAPITANO RESTAURANT** with the intention of permanently depriving **CAPITANO RESTAURANT** of the said properties.”*

2. On 18 February 2022, you had waived your right to counsel, and you said you would represent yourself. On 11 November 2022, you said you understood the charges, and you pleaded guilty to the same. On being questioned by the court, you said you pleaded guilty to the two counts voluntarily and that no one forced you to do the same. The matter was then adjourned to 24th November 2022, to enable the prosecution to prepare the summary of facts.
3. On 24 November 2022, the prosecution presented their summary of facts to the court. Briefly they were as follows. The complainant, Mr. William Vulivuli, 45 years old, was a businessman and owned the “Capitano Restaurant” at Wailada, Lami. The accused was 19 years old and unemployed at the time. He resided at Valenicina Settlement. He was married with 2 young children aged 2 and 1 year old. He reached form 5 level education at Assembly of God High School in Kinoya.
4. According to the prosecution, between 6 and 7 June 2021, at about midnight, the accused and his friends stole a boat from Metromix in Lami. They then rowed the boat towards “Capitano Restaurant”. On reaching the restaurant, they climbed onto a balcony, removed 3 louver blades from a window and

climbed into the restaurant. They entered the restaurant as trespassers, with intentions to steal.

5. In the restaurant, the accused and his friends saw a Sony Bluetooth speaker, valued at \$2,799 and a Makita drop saw, valued at \$2,400. The accused and his friends stole the speaker and saw, put the same in the boat and later paddled away, with the same. The accused later took the speaker as his share, while his friends took the saw as their share. The accused later sold the speaker to a friend for \$100.
6. The complainant reported the matter to the police. An investigation was carried out. The accused was arrested on 20 July 2021. He was caution interviewed by police, on the same date. He fully admitted the offences to the police.
7. The court checked with the accused on whether or not he admitted the prosecution's summary of facts. He said, he did. On that basis, the court found him guilty as charged and convicted him accordingly.
8. The accused was a first offender. He made his plea in mitigation verbally.
9. "Aggravated burglary" is an indictable offence, and viewed seriously by the Parliament of Fiji. It carried a maximum penalty of 17 years imprisonment (section 313 (1) (a) of Crimes Act 2009). The tariff for the offence is a sentence between 6 to 14 years imprisonment: see **State v Shavneel Prasad**, Criminal Case No. HAC 254 of 2016, High Court, Suva. Of course, the final sentence will depend on the aggravating and mitigating factors.
10. "Theft", contrary to section 291 (1) of the Crimes Act 2009 carried a maximum penalty of 10 years imprisonment.
11. It appears there was no aggravating factor in this case.

12. The mitigating factors were as follows:
- (i) The accused, now at 20 years old, is a first offender.
 - (ii) The accused pleaded guilty to the charge 11 months after first call in the High Court. He nevertheless, saved the court's time.
 - (iii) The properties he stole was recovered by the police.
 - (iv) He co-operated with the police during their investigation, and admitted the offence when caution interviewed.
 - (v) He had been remanded in custody for one month.
13. The court had carefully examined the facts of this case. The accused, was 19 years old at the time of the offence. He was obviously naïve and immature in the way he behaved. I had carefully observed his behaviour during his appearance in court. Obviously, he had learned a lot by appearing in court on this matter. Because he pleaded guilty and is a first offender, I will give him a second chance to reform himself. Pursuant to section 15 (1) (h) of the Sentencing and Penalties Act 2009, he has been convicted as charged on both counts on 24 November, 2022. Today, I discharge him, with a warning if he commits another offence in 12 months, he will be imprisoned immediately if found guilty.
14. You have 30 days to appeal to the Court of Appeal.



Salesi Temo
Acting Chief Justice

Solicitor for State : **Office of the Director of Public Prosecution, Suva**
Solicitor for Accused : **In Person.**