

THE HIGH COURT OF FIJI
AT SUVA
CRIMINAL JURISDICTION

Criminal Case No. HAC 063 of 2024

BETWEEN : **THE STATE**

AND : **JONE VASU**

Counsel : Ms Cabemaiwai for the State
Mr T Ravuniwa for the Accused

Hearing : 24 April 2024

Sentence : 3 May 2024

SENTENCE

- [1] Jone Vasu, you appear today for sentencing.
- [2] You are charged with the following two counts:

Count 1

Statement of Offence

AGGRAVATED BURGLARY: contrary to section 313(1)(a) of the
Crimes Act 2009

JONE VASU with another on the 9th day of January 2024, at Nasinu, in
the Central Division, in the company of each other entered into the home of
SANJEET PRASAD as trespassers with intent to commit theft.

Count 2

Statement of Offence

THEFT: contrary to section 291(1) of the Crimes Act 2009

JONE VASU with another on the 9th day of January 2024, at Nasinu, in the Central Division, in the company of each other dishonestly appropriated 1 x Samsung A71 brand mobile phone, 1 x Samsung J8 brand mobile phone, 2 x Red Vodka Liquor, 2 x sunglasses, 1 x Apple MacBook, 20 x Pro 6 Earbuds, 50 x Samsung brand earpiece and assorted jewelry the property of **SANJEET PRASAD** with the intention of permanently depriving **SANJEET PRASAD** of the said property..

[3] On 27 March 2024, you pleaded guilty to both counts.¹

[4] The summary of facts and mitigation were heard on 24 April 2024. Counsel have since filed supplementary submissions and authorities. I wish to express my sincere gratitude to both counsel for their helpful submissions.

Summary of Facts

[5] At the time of your offending on 9 January 2024, the victim, Mr Sanjeet Prasad, was residing at Rokara Settlement, Nasinu. He was 24 years of age and employed. That morning, he locked his house and left for work.

[6] Early that afternoon, you and an accomplice broke into Mr Prasad's house. The accomplice used his leg to push open the main door of the house in order to gain entry. A CCTV camera installed outside the house by the victim showed that you and the accomplice initially tried to gain entry from a window but were unsuccessful as it was grilled. The CCTV footage shows that you both entered Mr. Prasad's home through the broken door at about 2.17 pm and left at about 3.15 pm. You both used Mr. Prasad's bags to store the items stolen. The property stolen from Mr Prasad was as follows:

- 1 x Samsung A71 brand mobile phone.
- 1 x Samsung J8 brand mobile phone.
- 2 x red vodka liquor.
- 2 x sunglasses.

¹ The information originally incorrectly identified the date of the offending as 9 February 2024. The information has been amended and you have pleaded guilty to the amended information.

- 1 x Apple MacBook.
- 20 x Pro 6 earbuds.
- 15 x Samsung brand earpiece.
- Assorted jewelry.

- [7] Mr Prasad has estimated that the cost of the stolen items is about \$12,019.00. The CCTV footage shows that your accomplice left the premises first carrying one Nagindas shopping bag and a duffle bag containing many of the stolen items while you left carrying another Nagindas shopping bag and a backpack with the rest of the stolen items.
- [8] Mr. Prasad returned home after work to find his main door was damaged and upon entering his house saw that his home was ransacked. He immediately reported the matter to the police.
- [9] Mr. Prasad has no relationship to you. However, you are known to him and, therefore, when he viewed the CCTV footage Mr Prasad was able to identify you as one of the two offenders.
- [10] On 4 February 2024, the police received information as to your whereabouts and arrested you in your home at Rokara settlement.
- [11] You were interviewed by the Police under caution on 5 February. I have read the caution interview. It is clear that you admitted your guilt from the outset of the interview and cooperated fully with the Police. You described what you had done on 9 January when you broke into Mr Prasad's house and stole his property. You accepted that you were the person seen on Mr Prasad's CCTV footage and you also supplied the name of your accomplice, Jijiwa, and his whereabouts. In terms of the events on 9 January 2024, you told the police that you were going to buy 'suki' from the shop when you saw Jijiwa who called you over and told you that you would both break into the house. You told the police that it was Jijiwa who broke into the house using his leg. This is supported by the CCTV footage. Jijiwa told you to stand near the front door as the look out. Jijiwa then went through all the rooms looking for items to steal and filling Mr Prasad's bags with the stolen items. You told the police that it was Jijiwa who ransacked Mr Prasad's home. Before leaving the house, Jijiwa gave you a black carry bag containing a toolbox and a Nagindas

shopping bag. Inside the Nagindas bag were two red vodkas and an ice cream container containing yaqona. Jijiwa told you not to tell anyone about the break in.

[12] According to the Prosecution's Summary of Facts, a team of police officers went to your home with a search warrant on 6 February 2024 looking for the stolen items. None were found. You do not accept this fact. Most likely, you were in police custody at the time and, therefore, unaware of the police search. The fact of the police search is not important to your sentence and, therefore, I will disregard it given you deny this fact. However, it is important to note that the Police have not recovered any of the items stolen from Mr Prasad.

[13] You were charged with two counts on 7 February 2024 and appeared before the Magistrates Court the same day, at which time the matter was transferred to the High Court. You were bailed, briefly, on 11 March 2024. However, when your plea was taken on 27 March 2024 you pleaded guilty and have been back in remand since then awaiting sentence. The total number of days you have spent on remand up to today is 79 days.

[14] As I have stated, you have pleaded guilty to the two counts. I am satisfied that you pleaded guilty of your own free. You have been legally represented by the Legal Aid Commission. You understood the consequences of the guilty plea. Your guilty pleas were informed, unequivocal and freely and voluntarily given.

[15] I have considered the facts as admitted by you. I am satisfied that the elements of the offences of aggravated burglary and theft are established on the admitted facts. Accordingly, I accept your plea of guilty and I convict you.

Mitigation

[16] Your lawyer, Mr. Ravuniwa, has offered the following mitigation on your behalf:

- You were 19 years old when you committed the offence. You are now 20 years.
- You are single and unemployed.
- You were influenced through peer pressure to commit the offences.

- You cooperated with the police and pleaded guilty at the earliest opportunity, saving both the police and this court precious time and resources.
- You are very remorseful and apologise for your conduct. You have indicated a desire to rehabilitate yourself.

Sentencing regime

[17] I deal first with the offence of aggravated burglary. The maximum penalty for this offence is 17 years. The tariff guideline for aggravated burglary has been set out by the Court of Appeal in *Kumar & Vakatava v State* [2022] FJCA 164 (24 November 2022). The guideline is as follows:

[75] As the first step, the court should determine harm caused or intended by reference to the level of harm in the offending to decide whether it falls into High, Medium or Low category. The factors indicating higher and lower culpability along with aggravating and mitigating factors could be used in the matter of deciding the sentencing range. This would allow sentencers wider discretion and greater freedom to arrive at an appropriate sentence that fits the offending and the offender.

Determining the offence category

The court should determine the offence category among 01-03 using inter alia the factors given in the table below:

- **Category 1 - Greater harm (High)**
- **Category 2 - Between greater harm **and** lesser harm (Medium)**
- **Category 3 - Lesser harm (Low)**

<i>Factors indicating greater harm</i>
<i>Theft of/damage to property causing a significant degree of loss to the victim (whether economic, commercial, sentimental or personal value)</i>
<i>Soiling, ransacking or vandalism of property</i>

<i>Restraint, detention or gratuitous degradation of the victim, which is greater than is necessary to succeed in the burglary. Occupier or victim at home or on the premises (or returns home) while offender present</i>
<i>Significant physical or psychological injury or other significant trauma to the victim beyond the normal inevitable consequence burglary.</i>
<i>Violence used or threatened against victim, particularly the deadly nature of the weapon</i>
<i>Context of general public disorder</i>
Factors indicating lesser harm
<i>Nothing stolen or only property of very low value to the victim (whether economic, sentimental or personal). No physical or psychological injury or other significant trauma to the victim</i>
<i>Limited damage or disturbance to property. No violence used or threatened and a weapon is not produced</i>

[76] Once the level of harm has been identified, the court should use the corresponding starting point in the following table to reach a sentence within the appropriate sentencing range. The starting point will apply to all offenders whether they plead guilty or not guilty and irrespective of previous convictions. A case of particular gravity, reflected by multiple features of harm, could merit upward adjustment from the starting point before further adjustment for level of culpability and aggravating or mitigating features.

LEVEL OF HARM (CATEGORY)	BURGLARY (OFFENDER ALONE AND WITHOUT A WEAPON)	AGGRAVATED BURGLARY (OFFENDER <u>EITHER</u> WITH ANOTHER <u>OR</u> WITH A WEAPON)	AGGRAVATED BURGLARY (OFFENDER WITH ANOTHER <u>AND</u> WITH A WEAPON)
HIGH	Starting Point: 05 years Sentencing Range: 03–08 years	Starting Point: 07 years Sentencing Range: 05–10 years	Starting Point: 09 years Sentencing Range: 08–12 years
MEDIUM	Starting Point: 03 years Sentencing Range: 01–05 years	Starting Point: 05 years Sentencing Range: 03–08 years	Starting Point: 07 years Sentencing Range: 05–10 years
LOW	Starting Point: 01 year Sentencing Range:	Starting Point: 03 years Sentencing Range: 01–05 years	Starting Point: 05 years Sentencing Range: 03–08 years

06 months – 03 years		
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[77] The following table contains a **non-exhaustive** list of higher and lower culpability factors relating to the offending. Any combination of these, or other relevant factors, should result in an upward or downward adjustment from the starting point. In some cases, having considered these factors, it may be appropriate to move outside the identified category range.

Factors indicating higher culpability
Victim or premises deliberately targeted (for example, due to vulnerability or hostility based on disability, race, sexual orientation) or victim compelled to leave their home (in particular victims of domestic violence). Child or the elderly, the sick or disabled at home (or return home) when offence committed
A significant degree of planning, or organization or execution. Offence committed at night.
Prolonged nature of the burglary. Repeated incursions. Offender taking a leading role.
Equipped for burglary (for example, implements carried and/or use of vehicle)
Member of a group or gang
Factors indicating lower culpability
Offence committed on impulse, with limited intrusion into property or little or no planning
Offender exploited by others or committed or participated in the offence reluctantly as a result of coercion or intimidation (not amounting to duress) or as a result of peer pressure
Mental disorder or learning disability, where linked to the commission of the offence

[78] The following table contains a **non-exhaustive** list of aggravating and mitigating factors relating to the offender. Any combination of these, or other relevant factors, should result in an upward or downward adjustment from the starting point. In some cases, having considered these factors, it may be appropriate to move outside the identified category range.

Factors increasing seriousness	Factors reducing seriousness or reflecting personal mitigation
Statutory aggravating factors:	<i>Genuine remorse displayed, for example the offender has made voluntary reparation to the victim</i>
<i>Previous convictions, having regard to a) the nature of the offence to which the conviction relates and its relevance to the current offence; and b) the time that has elapsed since the conviction</i>	<i>Subordinate role in a group or gang</i>
	<i>No previous convictions or no relevant/recent convictions.</i>
<i>Offence committed whilst on bail or parole.</i>	<i>Cooperation with the police or assistance to the prosecution</i>
Other aggravating factors include:	<i>Good character and/or exemplary conduct</i>
<i>Any steps taken to prevent the victim reporting the incident or obtaining assistance and/or from assisting or supporting the prosecution</i>	<i>Determination, and/or demonstration of steps taken to address addiction or offending behavior</i>
<i>Established evidence of community impact</i>	<i>Serious medical conditions requiring urgent, intensive or long-term treatment</i>
<i>Commission of offence whilst under the influence of alcohol or drugs</i>	<i>Age and/or lack of maturity where it affects the culpability and responsibility of the offender</i>
<i>Failure to comply with current court orders</i>	<i>Lapse of time since the offence where this is not the fault of the offender</i>
<i>Offence committed whilst on licence</i>	<i>Mental disorder or learning disability, where not linked to the commission of the offence</i>
<i>Offences Taken Into Consideration (TICs)</i>	<i>Any other relevant personal considerations such as the offender being sole or primary care giver for dependent relatives or has a learning disability or mental disorder which reduces the culpability</i>

[18] The Court of Appeal stated that there are two steps that must be followed. The first step is to identify the harm caused or intended in the offending. The Court of Appeal provided three categories (high, medium or low offending) and the relevant factors. The second step, once the category is found, is to consider the aggravating and mitigating circumstances in order to arrive at a head sentence.

[19] In terms of the three categories identified by the Court of Appeal, I am satisfied that the facts of this case fall within category 2, which is the medium level of harm. The reason for this is that only two of the five factors apply to your case, being the degree of economic loss to Mr Prasad and the ransacking of his home. According to you, it was your accomplice that did the ransacking. I accept this but this does not exonerate you from sharing some responsibility for Jijiwa's actions. The ransacking itself appears to have been low level harm, there being no suggestion that soiling or unnecessary damage or vandalism was caused to Mr Prasad's home (with the exception of course of the broken front door). The other factor that applies to you is the value of the property stolen. The amount of \$12,019.00 is a significant sum of money. Given this amount, your case cannot fall within category 3, being low level harm. However, there was no violence or degradation of the victim, and no significant physical or psychological trauma beyond the normal expected consequence of a burglary. Thus, the harm does not reach the category 1 high level. As the harm is category 2, the starting point is 5 years imprisonment and a sentencing range of 3 to 8 years.

[20] I turn to the second offence of theft which carries a maximum penalty of 10 years imprisonment. In *Ratusili v State* [2012] FJHC 1249 (1 August 2012), Madigan J 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.*

[21] Pursuant to s 17 of the Sentencing and Penalties Act 2009, where *'an offender is convicted of more than one offense, 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'. The two counts for which you have pleaded guilty arise from the same incident on 9 January 2024 and, therefore, I am satisfied that it is appropriate to impose an aggregate sentence of imprisonment on you in respect to the two counts.

[22] Before doing so, it is pertinent to set out the following comments made by Goundar J in *State v Takalaibau* [2018] FJHC 505 (15 June 2018) at [10]:

Burglary of home must be regarded a serious offence. A home is a private sanctuary for a person. People are entitled to feel safe and secure in their homes. Any form of criminal intrusion of privacy and security of people in their homes must be dealt with condign punishment to denounce the conduct and deter others. As Lord Bingham CJ in Brewster 1998 1 Cr App R 220 observed at 225:

Domestic burglary is, and always has been, regarded as a very serious offence. It may involve considerable loss to the victim. Even when it does not, the victim may lose possessions of particular value to him or her. To those who are insured, the receipt of financial compensation does not replace what is lost. But many victims are uninsured; because they may have fewer possessions, they are the more seriously injured by the loss than those they do have. The loss of material possessions is, however, only part (and often a minor part) of the reason why domestic burglary is a serious offence. Most people, perfectly legitimately, attach importance to the privacy and security of their own homes. That an intruder should break in or enter, for his own dishonest purposes, leaves the victim with a sense of violation and insecurity. Even where the victim is unaware, at the time, that the burglar is in the house, it can be a frightening experience to learn that a burglary has taken place; and it is all the more frightening if the victim confronts or hears the burglar. Generally speaking, it is more frightening if the victim is in the house when the burglary takes place, and if the intrusion takes place at night; but that does not mean that the offence is not serious if the victim returns to an empty house during the daytime to find that it has been burgled. The seriousness of the offence can vary almost infinitely from case to case. It may involve an impulsive act involving an object of little value (reaching through a window to take a bottle of milk, or stealing a can of petrol from an outhouse). At the other end of the spectrum it may involve a professional, planned organisation, directed at objects of high value. Or the offence may be deliberately directed at the elderly, the disabled or the sick; and it may involve repeated burglaries of the same premises. It may sometimes be accompanied by acts of wanton vandalism.²

² My emphasis.

Head sentence

- [23] In assessing the objective seriousness of your offending in this matter, I have considered the maximum sentence prescribed for the two offences, the sentencing guidelines by the Court of Appeal in *Kumar & Vakatava v State* (supra), the degree of your culpability, the manner in which you committed the offences and the harm caused to the victim. I give due cognizance to the sentencing guidelines stipulated in s 4 of the Sentencing and Penalties Act. In my view, and in line with category 2 in *Kumar*, the appropriate starting point is five years imprisonment.
- [24] The next step involves a balancing of aggravating and mitigating factors.
- [25] Firstly, the aggravating factors. I have already considered the value of the items stolen by you and your accomplice in placing you in category 2. You have, however, broken into a residential home. A violation of a person's home is grievous. I have no doubt that Mr Prasad will suffer psychological consequences from your criminal actions. I add 2 years imprisonment for these aggravating factors.
- [26] The mitigating factors present in your case are as follows:
- i. There is no evidence of planning on your part in respect to the offending.
 - ii. You say that you felt peer pressure from your accomplice. Mr Ravuniwa describes you as having a subordinate role in the offending and as having been exploited by your accomplice. This description is, in my view, reasonable as it is consistent with, firstly, jijiwa involving you in his criminality, secondly, Jijiwa taking most of the items stolen, and, thirdly, the CCTV footage showing that it was Jijiwa who broke the front door to gain entry into Mr Prasad's home.
 - iii. You cooperated fully with the Police.
 - iv. You pleaded guilty at the first opportunity when a plea was taken on 27 March 2024. You have, therefore, saved both this court and the police precious time and resources that would otherwise have been expended.

- v. You have no previous convictions and were, until this offending, of previous good character.
- vi. You have expressed remorse. I accept from your actions, admitting your guilt from the outset, that your remorse is genuine
- vii. You are also young. You were only 19 years when you committed the offences.

[27] Due to the considerable mitigating factors present here, I deduct four years from your sentence. The result is that your head sentence is 3 years imprisonment.

[28] Pursuant to s 24 of the Sentencing and Penalties Act, the period that an offender spends in remand awaiting trial shall be considered as time already served, unless the court otherwise orders. You have already spent 79 days on remand. I make a deduction for time already spent on remand, resulting in a sentence of 2 years and 286 days.

Actual Sentence

[29] I now consider whether this is an appropriate case to impose a suspended sentence. Section 26 of the Sentencing and Penalties Act reads:

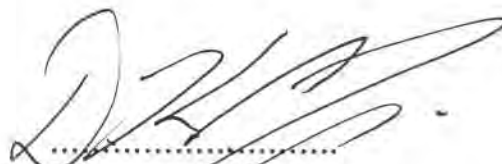
- (1) *On sentencing an offender to a term of imprisonment a court may make an order suspending, for a period specified by the court, the whole or part of the sentence, if it is satisfied that it is appropriate to do so in the circumstances.*
- (2) *A court may only make an order suspending a sentence of imprisonment if the period of imprisonment imposed, or the aggregate period of imprisonment where the offender is sentenced in the proceeding for more than one offence,—*
 - (a) *does not exceed 3 years in the case of the High Court; or*
 - (b) *does not exceed 2 years in the case of the Magistrate's Court.*

[30] In *Nariva v State* [2006] FJHC 6 (9 February 2006) Shameem J noted:

The courts must always make every effort to keep young first offenders out of prison. Prisons do not always rehabilitate the young offender. Non-custodial measures should be carefully explored first to assess whether the

*offender would acquire accountability and a sense of responsibility from such measures in preference to imprisonment.*³

- [31] It is my opinion that your chances of rehabilitation are high. You are a first offender and still young. Your conduct from the time you were arrested demonstrate that you understand that your actions were wrong. I, therefore, consider it is appropriate to suspend your sentence. However, in order to deter you (and other persons) from committing offences of this nature, and also to protect the community, I suspend your sentence for a period of five years.
- [32] Mr Vasu, would you please stand.
- [33] I sentence you to imprisonment for 2 years and 286 days. Your sentence is, however, suspended for a period of 5 years.
- [34] I will advise you of the effect of breaching a suspended sentence. If you commit any crime punishable by imprisonment during the suspended operational period of five (5) years and you are found guilty of the crime by a Court, then you are liable to be charged and prosecuted for an offence according to s 28 of the Sentencing and Penalties Act of 2009. If this happens, your sentence of imprisonment of 2 years and 286 days will be restored.
- [35] You have 30 days to appeal to the Court of Appeal.



D.K.L. Tuiqereqere

JUDGE

Solicitors:

Office of Director of Public Prosecutions for the State

Office of Legal Aid Commission for the Accused

³ I note that this approach has been applied up to the present; see *State v Bola* [2023] FJHC 63 (15 February 2023), *State v Tuiraviravi* [2023] FJHC 311 (18 May 2023), & *State v Tokabe* [2024] FJHC 156 (8 March 2024).