

IN THE HIGH COURT OF FIJI
AT LAUTOKA
CRIMINAL JURISDICTION

CRIMINAL CASE NO: HAC 87 OF 2020

STATE

vs

URAIA NATALIGA
SOLOVENI TUROQO

Prosecution: Mr L Baleilevuka (ODPP) for the State
Accused Persons: Ms K Vulimainadave (LAC) for Uraia Nataliga
Mr A Samy (LAC) for Soloveni Turoqo

SENTENCE

1. Uraia Nataliga and Soloveni Turoqo, both of you were charged with the respective offences as per the amended information filed by the State on 17th June 2024, as follows:

Count 1

Statement of Offence

FAILURE TO COMPLY WITH ORDERS: Contrary to section 69(1)(c) and section 69 (3)(v) of the Public Health Act 1935 and section 2 of the Public Health [Infectious Diseases] Regulations 2020.

Particulars of Offence

URAIA NATALIGA, ESIRA NAWAQELEVU & PENAI A RAREBA on the 13th day of April 2020 at Volivoli Rakiraki in the Western Division without lawful excuse, failed to comply with an order of the Permanent Secretary for Health and Medical Services namely by breaching the curfew hours from 8pm to 5am which were set in place for protection of public health.

Count 2

Statement of Offence

AGGRAVATED ROBBERY: Contrary to section 311(1)(b) of the Crimes Act 2009.

Particulars of Offence

URAIA NATALIGA, ESIRA NAWAQELEVU & PENAI A RAREBA on the 13th day of April 2020 at Volivoli, Rakiraki in the Western Division, in the company of each, robbed **HEANG RAN KIM** of 1 x Samsung S9 phone, 2 x music boxes, 2 x music mp3 players, 1 x Samsung tablet with keyboard, 1 x kitchen knife, 10 x assorted USB sticks, 3 x assorted charges, 1 x leather case, 1 x LG Battery, 1 x Gucci

Ladies Watch, 1 x Nokia Mobile phone, 1 x LG Smart phone with cover, 1 x Black GUESS Wallet, cash of \$20,173.00 (Fijian currency) and cash of 305000 (Korean currency) and immediately before such robbery used violence on the said **HEANG RAN KIM**.

Count 3

Statement of Offence

RECEIVING: Contrary to section 306(1) of the Crimes Act 2009.

Particulars of Offence

SOLOVENI TUROQO, between the 13th day of April 2020 and the 14th day of April 2020 at Rakiraki in the Western Division dishonestly received stolen property knowing or believing the property to be stolen.

2. Initially, you Uraia Nataliga and Soloveni Turoqo had pleaded not guilty to the alleged offenses. Later, after the charges were amended, you each made the decision to take a progressive approach and pleaded guilty to the respective offenses you were charged with. You both acknowledged your voluntary and uncoerced admission of guilt. The facts were presented and you both acknowledged the same. After carefully considering the surrounding circumstances that led to your guilty pleas and acceptance of the summary of facts, it is clear that you made informed and competent decisions. Your guilty pleas were unequivocal and you've both convicted as charged.
3. Two of your co-offenders, Esira Nawaqeleву and Penaia Rareba, had pleaded guilty to the mentioned offenses and had been convicted and sentenced by Justice Morais. This sentence ruling is for the two of you due to the pending charges against you both.
4. Here are the brief facts. On 13th April 2020, a nationwide daily curfew was implemented by the Permanent Secretary for Health & Medical Services from 8pm – 5am. The purpose of this curfew was to limit people's movement and prevent the spread of the COVID-19 pandemic. The mentioned restriction was implemented to safeguard public health. However, you Uraia Nataliga had violated the curfew orders and as you were discovered to be moving about outside your home after 5pm. Furthermore, on the night of 13th April 2020, you Uraia Nataliga and a group of individuals, having consumed alcoholic beverages, devised a plan to unlawfully obtain additional drinks. Uraia Nataliga and others then entered Grace Road Church at Volivoli Road. Uraia Nataliga gained unauthorized access and facilitated the entry of others. While Uraia Nataliga and the others were walking around inside the house, the victim, Heang Ran Kim, 58 years old, emerged from her bedroom and noticed Uraia

and the others gathered in the sitting room. The victim attempted to retreat to her bedroom in order to secure it, but Uraia and the others intercepted her before she could secure the door. Then one of the individuals brandishing a kitchen knife intimidated the victim and demanded that she hand over money. The victim chose not to speak and remained silent. Uraia and an accomplice proceeded to search the victim's residence and successfully located the money and other items mentioned in the charge details. Uraia and the others proceeded to take possession of all the items listed in the charge, which included the money in Fijian dollars and Korean won, as well as various belongings of the complainant. The victim's hands and mouth were then restrained with Sellotape before Uraia and his accomplice left the complainant's place. The victim managed to free herself after a few minutes and promptly reported the incident to the police.

On 13th & 14th April 2020, Uraia Nataliga had a meeting with Soloveni Turoqo at Nakorokula Village in Rakiraki. They have a familiar connection and come from the same village. Uraia then handed Soloveni \$5000 in cash and informed him that it had been acquired unlawfully. Soloveni, fully aware of the illicit origin of the funds, chose to conceal them in his plantation. Police conducted thorough investigations and based on received information, both of you Uraia Nataliga and Soloveni Turoqo were arrested and interviewed under caution. You both acknowledged the alleged offenses as charged. Soloveni, you provided the police with the location of the buried money in your plantation during the investigation. The money that was given to you has been recovered by the authorities.

The following items were recovered from Uraia Nataliga by police during investigations:

- \$5930.50
- 305000 Won (Korean currency)
- Pink LG Smartphone
- 1 x Black Toiletry Bag
- 1 x Nokia Mobile Phone
- Assorted Plastic Coin bags with following labels
 - i. 1 x ANZ coin bag with label "Naicker Kanu"
 - ii. 1 x coin bag with label "Food Sunday"
 - iii. 1 x Westpac coin bag with label "WM"

5. Uraia Nataliga, in mitigation your counsel submitted the following on your behalf:

- You've 34yrs old, separated from your wife and has a 14yr old daughter.
- You've presently serving for another offence and prior to that you worked as a farmer earning \$100 per week and lived at Nakorokula, Ra.

- You have 3 previous convictions.
 - In this matter you were remanded in custody from 17/4/20 to 1/7/22 (2 years 2 months 27 days) prior to being released on bail. Bail was revoked on 21/10/22 and remanded in custody again till you were convicted and sentenced on 28/3/24 in another matter before Justice Aluthge. According to your counsel, your time remanded in custody altogether equates to 3 years 7 months 4 days.
 - There was substantial recovery of stolen items from you.
6. Soloveni Turoqo, your counsel submitted the following mitigation on your behalf:
- You are presently 53yrs old however at the time of offending you were 49yrs old.
 - You've married with 3 children and they reside with you in Wailoku Suva.
 - You've a farmer by profession and earns around \$50 weekly to support your family.
 - Police recovered all the stolen items from you.
 - You made a grave mistake due to lack of sound judgment.
 - You pleaded guilty and remorseful for the offence and have learnt your lesson.
 - You have no adverse criminal records and this is your first offence.
 - According to your counsel, you were remanded in custody in this matter for 1 year 8 months.
7. The following I consider to be aggravating factors in this case:
- There appeared to be a certain level of planning involved in the intention to steal from someone and acquire additional alcohol once the supply being consumed by Uraia Nataliga and the other individuals involved had run out.
 - The offense occurred during the nighttime.
 - Significant amount of cash and valuable items were stolen.
 - The victim, a female, was 58 years old at the time of the incident and lived alone, making her vulnerable.
 - A kitchen knife was used to intimidate the victim.
 - The psychological impact suffered by the victim as noted in her victim impact assessment report filed on 23rd November 2020.
 - No regard for the property rights of the victim.
 - The frequency of similar offenses in the community, particularly those that are theft or property related.
8. For purpose of sentencing in this case I bear in mind sections 4(1), 4(2), 15, 16, 18 and 26 of the Sentencing & Penalties Act, 2009.

9. The Public Health Act 1935 sets out the Public Health and Infectious Disease Regulation 2020 subsection (2) of the regulation provides:
“any person who fails to comply with an order, prohibition, declaration, directive issued pursuant to section 69(1)(c) or (3) of the Public Health Act 1935 commits an offence and is liable to conviction to a fine not exceeding \$10,000 or imprisonment for a term not exceeding 5 years or both.”
10. Receiving Stolen Property under the Crimes Act 2009 carries a maximum imprisonment term of 10 years.
Established authorities suggest that the tariff for the said offence is between 12 months – 3 years, as it is regarded as serious offence (see: Tukai Taura v State [2003] HAA 103 & 104/02S; Ilaitia Turaga v State[2002] HAA 082/02S).
11. The prescribed penalty for Aggravated Robbery under section 311(1) of the Crimes Act 2009 carries a maximum penalty of 20 years imprisonment.
12. Justice Goundar in State v Vatunicoko [2018] FJHC 885; HAC 210. 2018 (21 September 2018) stated at paragraph 4 the tariff as follows:
 - Street Mugging - 18 months to 5 years imprisonment (Raqauqau v State [2008] FJCA 34; AAU0100.2007 (4 August 2008).
 - Home Invasion – 8 – 16 years imprisonment (Wise v State [2015] FJSC 7; CAV0004.2015 (24 April 2015).
 - A spate of robberies – 10 – 16 years imprisonment (Nawalu v State [2013] FJSC 11; CAV0012.12 (28 August 2013).
13. Although the Supreme Court decision in State v Eparama Tawake CAV 0025 of 2019 (28 April 2022) gave apt guidelines for aggravated robbery based on (a) degree of offender’s culpability and (b) level of harm sustained by the victim; the facts in Tawake (supra) relates to street mugging as opposed to home invasion, which is applicable to the present case. Therefore in this matter, I find it appropriate to adopt tariff guideline applicable to home invasion type of robbery and rely on the guideline in Wise (supra) whereby the tariff would be 8 years - 16 years imprisonment.
14. Due to the seriousness of the offending in this matter, I’m inclined to say that the primary consideration for sentencing in this matter is deterrence and rehabilitation is secondary. The punishment or sentence imposed should serve as a lesson for the two

offenders and also serve as a deterrent to those in the community having similar inclinations.

15. Further, the established guideline tariff for similar offences would not have allowed the issue of suspension to be even considered bearing in mind the circumstances of offending in this type of matters. Victims of home invasion type of robbery usually suffer significant physical and or psychological harm. Home invasion robberies pose a significant threat to public safety and instills fear in the community. Thus deterrent measures such as imprisonment must be imposed or viewed as the apt way to follow in order to make the offender responsible for his or her actions, teach them and also warn potential offenders that such crimes will not be tolerated.
16. For you Uraia Nataliga, taking into account the circumstances of offending and that both offences against you (1st & 2nd count) were committed in the same transaction or in close proximity, an aggregate sentence pursuant to section 17 of the SPA 2009 would be appropriate in your case. For purposes of sentencing, aggravated robbery would be taken as the principal offence as any sentence to be applied for the 1st count would be subsumed into the sentence for the 2nd count.
17. Taking into account the objective seriousness of the offending, I commence your sentence at 8 years imprisonment. For the aggravating factors I increase your sentence to 12 years.
18. For the mitigation I reduce your sentence to 11 years. For the guilty plea I further deduct your sentence to 9 years.
19. For your time in custody (3 years 7 months 4 days) I further deduct your sentence to 5 years 4 months and 26 days.
20. Your final aggregate sentence Uraia Nataliga for the 1st & 2nd count is therefore 5 years 4 months 26 days imprisonment. Bearing in mind the circumstances of offending, your background and potential for rehabilitation and the impact of such offending on society, I impose on you 3 years 7 months imprisonment as non-parole period.
21. You've currently serving an imprisonment term. Hence, I will further order that your prison term of 5 years 4 months 26 days with a non-parole period of 3 years 7 months

imprisonment in this matter, to be served concurrently to your existing imprisonment term.

22. For you Soloveni Turoqo, based on the objective seriousness of the offending, the mitigating factors, including this being your first offense (despite the state presenting your adverse records dating back to 6th February 2010, this offense will be considered your first as your previous conviction is more than 10 years old) and your guilty plea, I have decided to sentence you to 20 months imprisonment.
23. Your time remanded in custody which equates to 20 months was sufficient punishment and a lesson to be learnt by you. You are at liberty.
24. **Your final sentences ordered as follows:**
 - **Uraia Nataliga (1st & 2nd Counts) – Total Aggregate Sentence of 5 years 4 months 26 days with a non-parole period of 3 years 7 months imprisonment to be served concurrently to existing imprisonment term.**
 - **Soloveni Turoqo (3rd Count) – 20 months imprisonment. To be at liberty forthwith as time already served whilst remanded in custody.**
25. 30 days to appeal to the Court of Appeal.



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Samuela D Qica
Judge

High Court – Lautoka
Friday, 5th July 2024