

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

Criminal Case No.: HAC 132 OF 2023

STATE

V

RB

RV

Counsel: Ms R. Uce for State
Ms L. Volau for Juveniles

Date of Sentence: 31 July 2025

PUNISHMENT

1. RB and RV (Juveniles) were jointly charged with one count of Aggravated Burglary and one count of Theft contrary to Sections 313(1)(a) and 291(1) respectively of the Crimes Act.
2. Both pleaded guilty to the aforesaid counts voluntarily and unequivocally. When the pleas were entered, they were represented by a Counsel of the Legal Aid Commission. After pleas were entered, both Juveniles opted not appear in Court. Bench warrants issued to arrest them were of no avail. Having been satisfied that the Juveniles were deliberately absconding, the Court now proceeds to punish them in absentia.

3. The summary of facts were read in Court in the presence of the counsel from the Legal Aid Commission who had received proper instructions to appear and mitigate on behalf of the Juveniles.
4. The facts revealed that the 1st Juvenile RB is 16 years of age, unemployed of Savalau, Votualevu, Nadi. The 2nd Juvenile RV is also 16 years of age, student of Votualevu College and resides at Tadra, Votualevu in Nadi. The 1st complainant is Raj Kumar, 72 years of age, retired of Savalau, Votualevu in Nadi. The 2nd complainant is Shiu Kumari, 69 years of age, domestic duties of Savalau, Votualevu in Nadi. The 1st and 2nd complainant are husband and wife and both reside together in Savalau, Votualevu in Nadi.
5. On the 18th of August, 2023 at about 9.30am, the two complainants left their home after securely locking it to Sabeto Police Station to lodge a report about the 2nd complainant's stolen mobile phone. From Sabeto Police Station, the two complainants then went to the Vodafone Office in Namaka town.
6. At about 2pm, the two complainants returned to their home at Savalau, Votualevu in Nadi. When the two complainants reached home, they found the back kitchen door was damaged and forcefully opened. Upon entering the kitchen, the two complainants saw the main door to their house was also damaged. The two complainants also noticed their household items were scattered all over the house. The 1st complainant discovered that \$15.00 cash was missing from the prayer room; and \$250.00 worth of clothes (t-shirts and shorts) were missing from his bedroom.
7. The complainant then lodged a report at the Sabeto Police Station and investigation was carried out. During the course of investigation, the two Juveniles were arrested and taken to the Sabeto Police Station for question. The 1st juvenile led the police to the place where he had hidden the plastic of clothes belonging to the 1st complainant. (*The search list dated 24th August, 2023 was tendered*). The 1st complainant was shown the plastic of clothes at the Sabeto Police Station and confirmed that the clothes belong to him.

8. On the 23rd of August, 2023, the 1st juvenile was interviewed under caution by DC 6547 Mani and in the presence of his father Sakiusa Drikalu at the Sabeto Police Station. The 1st juvenile admitted that he and one Rusiate had forcefully entered the house and stole cash of \$15.00 and assorted clothes (Q/A. 33 – 34). On the date of the offence, he woke up at about 12pm and came to Savalau Road and whilst walking on the road, he met Rusiate (Q/A. 36 – 39). He told Rusiate for them to go and check one house (Q/A. 40). The house belongs to one old man (Q/A. 41). He told Rusiate to wait outside and that he will go inside the house (Q/A. 42). He picked up one garden scissors and broke the back door (Q/A. 43). When he entered, he saw another door from where you can enter inside the house (Q/A. 44). He used the same garden scissors to cut the mosquito screen and open the grill door (Q/A. 45). He saw another wooden door and bumped the door with his shoulder to forcefully open it (Q/A. 46 – 47). He went inside the house and looked for money but could not find any money (Q/A. 58 – 60). He went to one room, opened the drawer and took out t-shirts and shorts and packed them in one plastic bag (Q/A. 61). He went to the prayer room and picked up one five dollar note and coins (Q/A.62). He then ran outside to Rusiate using the same door which he broke and they both ran to the road (Q/A. 63 – 64). He gave \$5 note to Rusiate and informed him that he was going (Q/A. 65). He went and hid the clothes in the nearby bushes (Q/A. 66). He then went and bought one RC cola juice from the money which he stole (Q/A. 67). The 1st juvenile went for reconstruction and showed the police the scene, the house where he broke into and stole the money and the clothes and the place where he hid the clothes (Q/A. 68 – 76). [*The Record of Interview of the 1st juvenile dated 23rd August, 2023 was tendered*].
9. The 2nd juvenile was also interviewed under caution on the 24th of August, 2023 by WPC 6838 Mere and in the presence of Social Welfare Officer Elizabeth Obrian at the Sabeto Police Station. The 2nd juvenile said that he was at home on the date of the alleged incident when Revoni came to his house and called him (Q/. 29 – 31). They went to Raj Kumar's house (Q/A. 32). He was standing outside and Revoni went inside (Q/A. 33). He said that Revoni went through the door at the back (Q/A. 34). He was standing on the driveway to see if anybody will come to the house (Q/A. 35 – 36). He said that when Revoni came to his

home, Revoni had informed him that nobody was in the house and for them to go there (Q/A. 37). After half an hour, Revoni came out from the same door (Q/A. 38 – 39). He said that Revoni came out with a white plastic containing clothes (Q/A. 40). He said Revoni gave him \$5.00 and they left out from there (Q/A. 41 – 42). He used the money to buy 5 pack Chow noodles and 1 kool shake (Q/A. 43). He shared the items with Revoni (Q/A. 43). He said that \$10 was kept by Revoni as he was informed about it (Q/A. 44). [*The Record of Interview of the 2nd juvenile dated 24th August, 2023 was tendered*]

10. The facts admitted by the Juveniles satisfy all the elements of Aggravated Burglary and Theft. I find the Juveniles guilty of Aggravated Burglary and Theft as charged.
11. Burglaries are on the rise in Fiji. The courts have emphasised that the increasing prevalence of these offences in our community calls for deterrent punishments. However, the first and young offenders must be given an opportunity to rehabilitate themselves.
12. The offence of Aggravated Burglary carries a maximum sentence of 17 years imprisonment. The Court of Appeal in *Avishkar Rohinesh Kumar and Another v The State*¹ established a new tariff for the offence of Aggravated Burglary. Accordingly, as the first step, the court should determine harm caused or intended to the victim and decide whether it falls into the High, Medium or Low category. In this case, property stolen were of very low value with no significant trauma to the victim. I would put this burglary into the lesser harm category.
13. The culpability level is also very low given that there was no pre-planning or sophistication in the offence. The offenders had entered the house during day time with prior knowledge that the house was not occupied. It was rather an opportunistic theft. I would select a starting point within the range of 1-3 years using the table in the guideline judgment.
14. The maximum sentence for Theft is 10 years' imprisonment. The tariff ranges from 4 months to 3 years imprisonment²

¹ [2022] FJCA 164; AAU 117 of 2019 (24 November 2022)

² Waqa v State [2015] FJHC 72 (5 October 2015)

15. The two offences were founded on the same facts. According to Section 17 of the Sentencing and Penalties Act 2009, if an offender is convicted of more than one offence founded on the same facts, or which form a series of offences of the same or a similar character, the court has the discretion to impose an aggregate sentence of imprisonment in respect of those offences. This is a fit case to impose an aggregate sentence on each offender for both offences.
16. Having considered the harm and the culpability factors as discussed above, I would select a starting point of 1 year imprisonment from the bottom end of the tariff reserved for low harm and low culpability Aggravated Burglaries, which is the principal offence.
17. The Corrections Services Act 2006 defines a juvenile to be a person who has not attained the age of 18 years, including a child and a young person. The Juveniles are young persons, 16 years of age at the time of the offence. Accordingly, they should be classified as Juveniles by virtue of Section 57 of the Corrections Services Act 2006 which has amended Section 2 of the **Juveniles Act** . Section 30(3) of the **Juveniles Act** provides that a young person shall not be ordered to be imprisoned for more than two years for any offence. Section 32 (1) and (2) further provides how to deal with juvenile offenders in 32 (1) of the Act. However, nothing in Section 32 of the **Juveniles Act** in any way restricts the power of the court to make any order or combination of orders which it is empowered to make under the Juvenile Act or any other written law except corporal punishment.
18. Both Juveniles lived with their parents. They admitted responsibility at the caution interview and pleaded guilty to the charge at the first available opportunity. By pleading guilty they saved time and resources of this Court. Part of the stolen items was recovered. They have nil previous convictions. I accept they are genuinely remorseful. They spent a considerable time in Suva Boys Centre under the supervision of the Child Welfare Officers. They should be given a second chance to rehabilitate. A suspended sentence fits the offence and the offenders.

19. I impose an imprisonment term of one year to be suspended for three years. The Juveniles are to be on probation during suspension of the sentence under the supervision of a Welfare Officer.



Aruna Aluthge
Judge

31 July 2025

At Lautoka

Solicitors:

Office of the Director of Public Prosecution for State

Legal Aid Commission for Juveniles