

VILIAME CAVUILAGI v STATE (HAA0031 of 2004)

HIGH COURT — APPELLATE JURISDICTION

5 WINTER J

7, 14 April 2004

Criminal law — sentencing — dishonesty offences — burglary — larceny.

10 The Complainant was not in his house when the Appellant forced a window open and entered into the Complainant's house and stole a JVC stereo worth \$350. He was reported to the police and admitted the offending.

The Appellant pleaded guilty to one charge of burglary and one charge of larceny in a dwelling house and was sentenced to 2 years' imprisonment.

15 The Appellant appealed against his sentence and argued that the learned magistrate erred by over-weighting the aggravation of the Appellant's previous convictions and alleged that the sentence was outside of the range of penalties generally imposed for the offending mentioned.

20 **Held** — (1) Repetitive, recidivist offending must inevitably lead to longer sentences of imprisonment unless the offender can show special circumstances that would make the court to sentence otherwise. The Appellant's sentence was lenient considering his previous convictions. The Appellant had 42 previous convictions and had a semi-professional criminal lifestyle. He needed lengthy sentences to punish him and stop him from committing again further offences.

25 Appeal dismissed.

Cases referred to

Eveli Labalaba v State Cr App 004/2001; *James Stolz v State* Cr App 50/1999; *Manoa Laqere v State* Cr App 31–34, 61/1997; *Shiu Prasad v State* Cr App 28, 29, 35/1993, cited.

30 Appellant in person

S. Qica for the Respondent

35 **Winter J.** This is an appeal against sentence. The Appellant was sentenced on 22 January 2004. He pleaded guilty to one charge of burglary and one charge of larceny in a dwelling house. He received a 2-year sentence of imprisonment.

Particulars of the offence

40 The complainant on 2 July 2003, left her house locked and secured to visit relatives. The Appellant went on to the property forced a window open and gained entry into the home. He stole a JVC stereo worth \$350.

He was seen by neighbours as he was making his way back out of the house window. They identified him and reported the matter. The stereo was recovered. At interview by police the Appellant admitted the offending.

45 **The appeal**

In a typewritten letter signed by the Appellant, he pleads:

- 50 (1) betrayed by the lack of parity in the sentencing with those on similar charges taking money or goods to a greater value;
- (2) criticism on the sentencer for improperly weighing his culpability on this offence;

(3) a criticism of the sentencer for giving too much weight to his previous convictions;

(4) he finally describes himself as a father of a class five student working as a labourer at the Ports Authority of Fiji.

5 At appeal he was warned of his right to counsel and advised his opportunity to apply for legal aid. He specifically waived his rights to counsel and wanted the appeal to proceed.

The Appellant had prepared written submissions; I reviewed them. His primary pleading was that the learned magistrate had fallen into error by overweighting
10 the aggravation of the Appellant's previous convictions. He also said the sentence was outside of the range of penalties generally imposed for this offending. He quoted some examples.

Generally he sought to re-mitigate the sentence by urging me to accept his genuine wish to rehabilitate, get on with a lawful life and care for his son.

15 The State filed written submissions. Counsel understandably emphasised the extreme aggravating feature of the Appellant's previous convictions.

As far as the plea of rehabilitation is concerned counsel's submission was that this could be achieved on the prisoner's release from gaol.

The Respondent submitted there was no error of principle in the sentencing.
20 The State further claimed this sentence wasn't excessive having regard to the 42 previous convictions some similar in nature to the subject offending. Tariff decisions were referred to.

The sentence

25 In a succinct sentencing decision the learned magistrate identified nine features of mitigation and aggravation for this offending:

(1) a plea of guilty was given a discount;

(2) the fact that stolen items were recovered was considered;

(3) drunkenness was excluded as a proper consideration;

30 (4) observations on a life long journey of crime with similar convictions were made;

(5) no improvement shown on his life;

(6) a serious offence;

35 (7) an offence invading privacy requiring the court to protect privacy and protect the community from burglaries; and

(8) a deterrent sentence is therefore appropriate.

The learned magistrate's decision was correct in principle and properly construed.

40 Sentencing principle

Repetitive, recidivist offending must inevitably lead to longer sentences of imprisonment unless the offender can demonstrate special circumstances that motivate the court to sentence otherwise. This principle meets three of society's
45 needs. First it might act as a deterrent to the offender and others who fall into a pattern of semi-professional crime to support themselves. Second: society is entitled to sideline or warehouse repeat offenders out of the community for longer periods of time so that at least during the term of incarceration they cannot wreck havoc on the lives of law-abiding citizens. Third: offenders deserve punishment that fits the circumstances of the crime.

50 The tariff for this type of offending has received commentary on the following cases:

	<i>Case Name</i>	<i>Case Reference</i>	<i>Sentence</i>
	<i>Shiu Prasad v State</i>	Cr App 28, 29, 35/1993	First offender, 12 months' imprisonment
5	<i>Manoa Laoere v State</i>	Cr App 31–34, 61/1997	Previous offender ++ four-and-a-half years' imprisonment
	<i>James Stolz v State</i>	Cr App 50/1999	Previous offender 2 years' imprisonment
10	<i>Epeli Labalaba v State</i>	Cr App 004/2001	Previous offender ++2 years' imprisonment

15 From these decisions it is clear that a sentence of imprisonment in the range of 1–4 years is appropriate. The upper end of that scale being reserved for especially aggravating features of the offence or the offender. Repeat offenders can expect a sentence of at least 2 years' imprisonment.

Decision

20 In my view bearing in mind the admitted previous convictions the sentence was if anything lenient. The Appellant has 42 previous convictions. His first larceny conviction was in 1982. His last offending for factory breaking, entering and larceny was in March 2001. The only respite in his offending during those years appears to have come from time spent in custody. I infer from his history
25 that he does indeed have a semi-professional criminal lifestyle. He needs increasingly lengthy sentences to punish him, deter him from further offending and encourage, by example, others that repetitive offending will be treated sternly. At the very least society deserves some small comfort from the knowledge that during his time in gaol he will be out of the way and therefore
30 not able to ply his miserable trade.

If he is genuine in his plea of conversion in his life then he will accept this punishment, hold fast to his belief and make the most of the precious time left to him after release from prison by breaking his cycle of offending.

Conclusion

35 Appeal dismissed.

Appeal dismissed.

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