

IN THE MAGISTRATE'S COURT AT LABASA
CRIMINAL JURISDICTION

Criminal Case No. 414 of 2014

STATE

v

AVISHAL AVIKESH PRASAD

Appearance : **PC Lal** for the prosecution
Mrs Marama. K for the accused

Sentence : **18 January 2019**

SENTENCE

1. *Avishal Avikesh Prasad*, the accused, today is for sentencing for one count of *Burglary* and one count of *Theft* for contravening *section 312* and *291* of the *Crimes Decree* respectively.
2. The accused pleaded guilty to the first count of *Burglary* on 28 September 2015, and was found guilty by the court after a newton trial for the second count of *Theft*.
3. The Court's findings are that between 25 and 26 July 2014, you stole a black Puma bag valued \$60.00, a black pair of safety boot valued \$80.00, a small gold sovereign chain valued \$130.00, a green wallet valued \$6.00, an orange round neck t-shirt valued \$60.00, a black shinny long pant valued \$55.00, a wrist watch valued \$25.00, a bluish red long sleeve shirt valued \$100.00, and cash of \$25.00, all to the total value of \$1,021.00 the property

of Harish Chand. The court finds that you did not steal the bottle of gin. The accused was convicted as charged for both the offences.

4. Your mitigation was filed by your counsel on 22 October 2018.
5. The maximum penalty for *Burglary* is 13 years imprisonment. The tariff is from 12 months to 3 years imprisonment as set in ***Mosese Uluicicia v State***, *Criminal Appeal No. HAA 028 of 2014*. The maximum penalty for *Theft* is 10 years imprisonment. The tariff is 2 to 9 months for simple theft and 9 months and more for repeated offenders as set in ***Vakarauvanua v The State*** [2004] FJHC 116.
6. The aggravating factors are;-
 - i. *Create fear and insecurity to property owners.*
 - ii. *Have no regard to the peaceful use and enjoyment of property by their owners.*
7. The compelling mitigating factors are;-
 - i. *Young offender of 22 years old.*
 - ii. *Partial recovery.*
 - iii. *Newton trial as accused was disputing the bottle of gin.*
 - iv. *Remorseful and ask for forgiveness.*
 - v. *Full co-operation with the police.*
8. In your sentence, I start with the offence of *Burglary*. My starting point for *Burglary* is 2 years. I add 1 year for the aggravating factors and that increase your sentence to 3 years imprisonment. I reduce 1 year for your mitigation and that reduce your sentence to 2 years imprisonment.
9. You entered an early guilty plea. In the case of ***Vilimone v State*** [2008] FJHC 12, the High Court recognised that one third of the sentence should be reduced for an early guilty plea. Your one third entitlement is 8 months. I reduce 8 months from your sentence and that reduce your sentence to 1 year and 4 months imprisonment.

10. I noted from the court record that when you appeared on 16 April 2018 for this case you were serving in another case and you are still serving. I reduce 4 months for the period you have been serving during the cause of this case. That reduce your sentence to 1 year imprisonment. Your final sentence for *Burglary* is 1 year imprisonment.
11. Both the offences were committed under one transaction. According to the one transaction rule, I impose 9 months as your sentence for the count of *Theft*.
12. Home and property invasion is a concern nationwide. To ensure that members of the public are protected from unwarranted invasion and to ensure the peaceful and comfortable use and enjoyment of their property, deterrent sentence both specific and general need to be issued to denounce such conduct. Considering *section 4* of the *Sentence and Penalties Act*, this sentence is founded on the principle of deterrent.
13. Avishal Avikesh Prasad, I now sentence you as follows:-
- a. Count 1 Burglary 1 year imprisonment.
 - b. Count 2 Theft 9 months imprisonment.
 - c. Sentence for both the counts to be served concurrent. Your principle sentence is 1 year and are to be served concurrently with the sentence that you are currently serving in another case.

28 days to appeal.



C. M. Tuberi
RESIDENT MAGISTRATE