

**IN THE MAGISTRATES' COURT OF FIJI
AT TAVUA
CRIMINAL JURISDICTION**

Criminal Case No: 165 - 2019

STATE

-v-

SHIVAL SAHIL PRASAD

Before : RM Fotofili L.
For Prosecution : A/CPL Chand A. [Police Prosecution]
For Defendant : In Person,
Date of Sentence : 15th February 2022

SENTENCE

1. **SHIVAL SAHIL PRASAD**, you have elected a Magistrates' Court trial and pleaded guilty to the following charge:

First Count

Statement of Offence

BURGLARY: Contrary to section 312 (1) of the *Crimes Act of 2009*.

Particulars of Offence

SHIVAL SAHIL PRASAD between 1st day of March, 2019 and the 31st day of May, 2019 at Malele No. 2, Tavua in the Western Division, entered into the dwelling house of **KALIKA PRASAD** as a trespasser with intent to commit theft.

Second Count

Statement of Offence

THEFT: Contrary to section 291 (1) of the *Crimes Act of 2009*.

Particulars of Offence

SHIVAL SAHIL PRASAD between 1st day of March, 2019 and the 31st day of May, 2019 at Malele No. 2, Tavua in the Western Division, dishonestly appropriated (stole) 2 x 1 L bottle rum with 1x1 L bottle Gin valued at \$300, assorted groceries valued at \$20 and a hand drill valued at \$60 all to the total value of \$380 the property of **KALIKA PRASAD** with the intention of permanently depriving the said **KALIKA PRASAD** of his properties.

2. You had more than a year to sort out your application to the Legal Aid Commission in-order that they represent you. You did not utilise this opportunity and I have proceeded to deal with your case with you in person.
3. I am satisfied that your guilty plea to both the counts is voluntary and that you understand the consequences of your plea. Your admission in court and the evidence tendered in support of your admission also supports your plea.
4. I find you guilty of both the counts and I convict you of both counts accordingly.
5. The victim is your 68 year old uncle. He resides in New Zealand but has a house at Malele No. 2. You look after the property while the victim is in New Zealand. An 'extension' was made to the house and the victim allowed you and your family to reside in that newly constructed portion of house. The other part of the house is locked and secured and it contains the belongings of the victim. It is clear that you were not to interfere with these belongings. During the time in question and while the victim was overseas, you removed the louver blades gaining access to the victim's portion of the house and his belongings. You took the items mentioned in the particulars of the second count of the charge from inside that portion of the house and these items belonged to the victim. When the victim returned from New Zealand, he discovered his properties missing and he reported the matter to police. During the course of police investigations, you were arrested and then interviewed under caution by police.
6. In your police interview, you voluntarily admitted that you grew up in the area. You admit that the victim is your uncle or your father's older brother. He is also your neighbour. You admit that you went with another person. You entered through a window by removing the louver blades. You took liquor, drill and other items from inside the house.
7. In court before me, you accept that you have consumed the groceries and liquor which you stole.
8. The drill has been recovered from you during police investigations.
9. An order pursuant to section 155 (1) (c) of the **Criminal Procedure Act 2009** was made on the 26th of July 2019 to have the item released or returned to the victim as soon as practicable by police.
10. You are a first offender.
11. You have spent 4 days in remand.

12. You are 23 years old. You are single and you have no child or children. You support your 68 year old father.

AGGREGATE SENTENCE

13. Both the counts were committed in the course of the same transaction or founded on the same facts.
14. Pursuant to section 17 of the **Sentencing and Penalties Act 2009**, I will impose an aggregate sentence on you for both the counts.
15. Since burglary is the most serious of the counts, I will use that as the foundation when passing your aggregate sentence for both the counts.

MAXIMUM SENTENCE

16. The maximum sentence a court can impose for burglary is up to 13 years Imprisonment.

SENTENCING RANGE or SENTENCING TARIFF

17. I have adopted and I have been applying the tariff of 20 months to 6 years imprisonment which was recommended by the Hon. Justice Perera V.S. in the High Court case of **State v Prasad** - Sentence [2017] FJHC 761; HAC 254.2016 (12 October 2017).
18. His Lordship opined that the tariff should be increased because the maximum penalty under the **Crimes Act 2009** is 13 years imprisonment and the previous tariff of 12 months to 3 years imprisonment is less than a quarter of the maximum term imposable. The tariff for robbery, aggravated robbery has been refined and the tariff for these offences is proportionate to the maximum terms imposable for those offences.
19. Importantly, his Lordship also reasoned for the need for the increase in the tariff for burglary where he stated the following:

12. property offences such as theft, burglary and robbery are prevalent in this country. As a result, many people have opted to cage themselves inside burglar bars. Needless to say that the above offences also have a negative impact on the commercial activities in the country. Therefore, leniency with regard to the offences ... committed will send a wrong message to the society and it will make the protection of the community more difficult.

13. I am inclined to hold the view that the established tariff(s) for the offence of burglary is itself lenient.

STARTING POINT

20. Based on the objective seriousness of the offence, I select an aggregate starting point of 2 years and 4 months imprisonment.

AGGRAVATING FEATURES

21. Although you have made admissions that you committed the offence together with another, I cannot use this factor to aggravate your sentence as the prosecution have charged you with burglary and not aggravated burglary.
22. However, the victim is your uncle.
23. You were entrusted to look after the house and his properties. You breached that trust.
24. You removed the louvers to the victim's house.
25. I increase your aggregate sentence to 3 years and 6 months imprisonment.

MITIGATION

26. You are a first offender.
27. I accept that you are remorseful.
28. You cooperated with police when questioned.
29. At least the drill has been recovered.

30. I reduce your aggregate sentence to 3 years imprisonment

GUILTY PLEA

31. You have pleaded guilty early.

32. For this, I reduce your sentence to 2 years imprisonment.

TIME IN REMAND

33. You have spent 4 days in remand.

OBJECTIVE IN SENTENCE

34. Your sentence is aimed at deterrence and is to punish you adequately.

SUMMARY

35. **SHIVAL SAHIL PRASAD**, you will receive a combined or aggregate sentence for both the counts.

36. You are sentenced to an aggregate 2 year imprisonment term which is equivalent to 24 months imprisonment.

37. I am persuaded to suspend your sentence but only in part.

38. Out of the 24 months imprisonment, 13 months will be suspended for 2 years.

39. Do not reoffend or commit any other serious offence punishable with imprisonment in the next 2 years because you risk having this 13 months imprisonment that is held in waiting or in reserve being, activated.

40. Out of the remaining 11 months, I deduct 4 days for your time in remand which means you have 10 months and 24 days remaining.

41. You will serve 10 months and 24 days imprisonment immediately from today.

42. I also impose and finalise a domestic violence restraining order [DVRO] with section 27 standard non-molestation conditions on you for the benefit of the victim your uncle.
43. From here on out, do not misbehave towards him or breach any condition of this DVRO as you may be charged with another offence.
44. Prosecution is to advise the victim of the existence of this DVRO.
45. 28 days to appeal.



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Lisiate T.V. Fotofili

Resident Magistrate

At TAVUA this 15th day of February, 2022