

IN THE MAGISTRATES' COURT OF FIJI  
AT TAVUA  
CRIMINAL JURISDICTION

Criminal Case No: 380 - 2020

STATE

-v-

ISOA NASARA

Before : RM Fotofili L.  
For Prosecution : A/CPL Chand A. [Police Prosecution]  
For Defendant : In Person  
Date of Sentence : 1<sup>st</sup> February 2022

SENTENCE

1. ISOA NASARA, 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 No. 44 of 2009*.

*Particulars of Offence*

ISOA NASARA on the 5<sup>th</sup> day of November, 2020 at Tavualevu Village, Town in the Western Division, entered into the dwelling house of **UNAISI ROKOTAKALA** as a trespasser, with intent to commit Theft.

**Second Count**

*Statement of Offence*

**THEFT**: Contrary to section 291 (1) of the *Crimes Act Number 44 of 2009*.

*Particulars of Offence*

ISOA NASARA on the 5<sup>th</sup> day of November, 2020 at Tavualevu, Village, Tavua in the Western Division dishonestly appropriated (stole) a Samsung A10 mobile phone with red cover valued at \$309, the property of **UNAISI ROKOTAKALA** with the intention of permanently depriving **UNAISI ROKOTAKALA** of her property.

### Third Count

#### *Statement of Offence*

**FAILURE TO COMPLY WITH ORDERS**: Contrary to section 69(3) of the Public Health Act, 1935 and Regulation 2 of the Public Health (Infectious Diseases) Regulation, 2020.

#### *Particulars of Offence*

**ISOA NASARA** on the 5<sup>th</sup> day of November, 2020 at Tavua in the Western Division without lawful excuse was found between Tavualevu Village and Yasiyasi, Tavua after 12am and failed to comply with the hours of curfew between 11pm to 4am, an order issued by the **Permanent Secretary of Health**.

2. I am satisfied that your guilty plea to all three 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.
3. I find you guilty of all the three counts and I convict you of them accordingly.
4. The female victim was asleep when she heard disturbances. You entered her house and was inside her house wearing 'a yellow hood'. You disconnected the victim's mobile phone from its charger and you exited the house. She shouted and followed you. The victim came to your house and called her phone or the phone which you had taken. Your mother then brought the victim's phone to her as it was ringing and was hidden in a cooking pot.
5. During the course of police investigations, you were arrested and then interviewed under caution by police. In your police interview, you voluntarily admitted that you were drinking alcohol or spirit in town and was roaming in town. You then went to buy a cigarette at the victim's house. The victim was sleeping. You entered her house at 12 midnight. You were aware that a national curfew was in place between 11pm to 4am. You admitted entering the victim's house during the curfew hours. You showed police during the 'scene reconstruction', the victim's house amongst other things. You admitted going home and keeping the phone in a cooking pot.
6. An order pursuant to section 155 (1) (c) of the **Criminal Procedure Act 2009** was made on the 6<sup>th</sup> of November 2020 to have the mobile phone released or returned to the victim as soon as practicable by police.
7. Generally, everyone has the right to be free or at liberty. This right can be limited if for example it is for the purpose of preventing the spread of an infectious or contagious disease [**2013 Constitution** at section 9 (1) (g)].
8. I take judicial notice of the existence of the Novel coronavirus (2019-nCoV) and amongst other things, the imposition of a curfew by the Permanent Secretary which

the Secretary is empowered to do pursuant to section 69 (3) (v) of the **Public Health Act 1935** to combat the spread of this pandemic.

9. There was a national curfew in place between 11pm to 5am at the material time and you breached it when you were outdoors around midnight and when you entered the victim's house to steal.
10. You are a first offender.
11. You were bailed when you first appeared but then remanded primarily because of your other subsequent files Tavua CF 82 – 2021 and Tavua CF 84 – 2021.
12. You have been in remand since the 29<sup>th</sup> of March 2021.
13. Out of the 10 months in remand, I will only consider 7 months as time served and I will deduct this 7 months from your sentence.
14. You are 19 years old. You were 18 years old when you committed the offence. You are a farmer. You are single. You are the eldest sibling and you support your mother and grandfather. You seek forgiveness.

#### **AGGREGATE SENTENCE**

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

#### **MAXIMUM SENTENCE**

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

## SENTENCING RANGE or SENTENCING TARIFF

19. I adopt 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 ).
20. 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.
21. 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

22. Based on the objective seriousness of the offence, I select an aggregate starting point of 2 years and 6 months imprisonment.

### **AGGRAVATING FEATURES**

23. There is a reference in the facts summarised by prosecution that you denied or had lied to police when police questioned you informally or verbally about stealing the phone. I cannot use this as an aggravating factor as it is not clear or I am not sure whether you were cautioned prior to answering police questions.
24. However, you committed the offence at midnight.
25. This offence is prevalent.
26. You breached the national curfew at the time which was in place to combat the spread of the pandemic.
27. I increase your aggregate sentence to 3 years and 10 months imprisonment.

### **MITIGATION**

28. The phone was recovered without your help and so I cannot use this as mitigation in your favour. Similarly I do not find your family circumstance compelling enough to be considered as mitigation too.
29. However, you are a young first offender.
30. I accept that you are remorseful.
31. You cooperated with police when formally questioned.
32. I reduce your aggregate sentence to 3 years and 2 months imprisonment

### **GUILTY PLEA**

33. You have pleaded guilty early.
34. For this, I reduce your sentence to 2 years and 1 month imprisonment.

### **OBJECTIVE IN SENTENCE**

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

**SUMMARY**

36. **ISOA NASARA**, you will receive a combined or aggregate sentence for all three counts.
37. You are sentenced to an aggregate 2 year and 1 month imprisonment term which is equivalent to 25 months imprisonment.
38. I cannot suspend this in part or in whole as it is more than 2 years imprisonment.
39. Out of the 25 months imprisonment, I will deduct 7 months for your time in remand.
40. This means that you have 18 months imprisonment remaining.
41. To encourage your rehabilitation, out of the 18 months imprisonment term remaining, you will serve 3 months without being eligible for parole.
42. You will serve your imprisonment term immediately from today.
43. There is some indication stemming particularly from your police caution interview, that the clothes that you wore on the night in question when committing the offence is in police custody.
44. I order the release of these to you or your agent to be collected within 21 days or sooner from police pursuant to section 155(1)(c) of the **Criminal Procedure Act 2009** and if it is not collected by you or your agent within the prescribed time whether you are still serving or not, police are authorised to destroy or dispose of these items after 21 days.
45. 28 days to appeal.



A handwritten signature in blue ink, appearing to read 'Lisiate T.V. Fotofili'.

.....  
Lisiate T.V. Fotofili  
**Resident Magistrate**

At TAVUA this 1<sup>st</sup> day of February, 2022