



COURT: MAGISTRATE'S COURT
AT CENTRAL DISTRICT – HONIARA

JURISDICTION: CRIMINAL JURISDICTION

CORAM: Ricky Rongomea, Deputy Chief Magistrate

APPEARANCES: Paul Junior Fanasia for the Prosecution (ODPP)
Jennifer Happilyn for Junior Kopu
Rochelle Palmer for Joe Alufurai

DATE OF SENTENCING: 5th day of February 2025

FILE NUMBER: CRIMINAL CASE NO. 425 OF 2024

BETWEEN: REX Complainant
AND: JUNIOR KOPU Accused
AND: JOE ALUFURAI Accused

SENTNCE

Background:

On the 18th of September 2024, the Prosecution initiated criminal proceedings against the two of you by filing the charge of Burglary against both of you. Burglary is an offence created under Section 299 (a) of the Penal Code.

On 21st of October 2024, you both, entered a plea of guilty, respectively, to the charge.

The agreed facts:

On the night of 9th July 2024, Alban Mengo, yourself Junior Kopu and Armstrong Takiba were drinking at a market stall at Choviri area. You, Joe Alufurai came and sat with them.

The three defendants, that was the two of you and Alban Mengo then planned to go and sell a headphone. On your way, you met a boy named Junior Sogavare and he told the two of you and Alban Mengo about a container of money that was inside the Complainant's house.

Junior Sogavare lives upstairs of the house with his parents, who are the landlords of the house downstairs, rented by the Complainant.

The two of you and Alban Mingo and Junior Sogavare then went to the Complainant's house.

Junior Sogavare gave a stick to Alban Mingo to open the door but he was afraid so you, Junior Kopu took the stick and poked the door and it opened.

At that time, you, Joe Alufurai was standing next to a kitchen house observing Junior Kopu and Alban Mingo attempting to open the door.

You, Junior Kopu then entered the house and took the container that contained money and went out of the house and gave the container to Alban Mingo.

The two of you and Alban Mingo then went to O'Brian's house next door where the three of you counted the money.

The amount counted and shared between you was \$150; which consisted of \$5, \$10 and \$20 notes.

You then shared the money, \$50 each amongst yourselves.

Those are the facts that constitute your offending.

Having satisfied that the elements of the charge have been demonstrated in the amended agreed facts filed today and tendered, I enter conviction against the both of you on your own guilty pleas.

Before proceeding to matters pertinent to the Court's sentencing discretion, I would first like to briefly examine the element of "break and enter." This constitutes a fundamental element of the present charge and warrants clarification before moving forward.

Section 297 of the *Penal Code* define 'break and enter' as;

"A person who breaks any part, whether external or internal, of a building, or opens by unlocking, pulling, pushing, lifting or any other means whatever, any door, window, shutter, cellar flap or other thing intended to close or cover an opening in a building, or an opening giving passage from one part of a building to another, is deemed to break the building."

The key question is whether simply poking the door with a stick, causing it to open, still meets the definition outlined under Section 297 of the *Penal Code*. I am confident that the door was initially closed, as the fact that a stick was needed to open it suggests it was not already open. However, regardless of how minimal the force required—whether a mere tap or push with the stick—the act of causing the door to open in this manner still constitutes breaking and entering.

Maximum penalty:

Burglary is considered a highly serious offence, as reflected in the fact that Parliament has set the maximum possible penalty as life imprisonment. However, when the law specifies only a maximum sentence without a fixed minimum, the court has the discretion to determine an appropriate length of imprisonment based on the circumstances of each case. In making this determination, the court takes into account various factors. One such factor is the offender's

age. In this particular case, both of you are 16 years old. As a result, the court is required to consider the relevant provisions of the *Juvenile Offenders Act*, which ensures that the sentencing process takes into account the unique circumstances and legal protections afforded to young offenders.

The aggravating factors:

The offences committed by both of you are made more serious by several factors.

First, the burglary was clearly premeditated, as shown by the circumstances of the crime.

Second, the offense took place at night. While it is unclear whether the complainant or their family members were present in the house at the time, burglarizing a dwelling at night creates a heightened risk of physical harm to any occupants. The lack of sufficient lighting and poor visibility can leave them vulnerable and unable to defend themselves effectively.

Third, you carried out the crime alongside Alban Mengo, meaning it was committed as a group. This not only confirms the deliberate and planned nature of the offence but also increases the potential danger to anyone inside the home.

Fourth, the \$150 stolen during the burglary was never recovered. While some may not consider this a large sum, it still represents a financial loss for the complainant and an unjust gain for you. You have directly benefited from your unlawful actions.

Personal Circumstances of Junior Kopu:

It is submitted on your behalf, Junior Kopu that you are 16 years old, from Nupani in Temotu Province. You are the last born child in a family of four. You decided to quit school in 2023 midway through Grade 6. I am told that you are from a broken home and currently under the care of your mother. You are a first time offender.

Matters in mitigation for Junior Kopu:

It is submitted that you had entered the guilty plea at the earliest opportunity and the plea has saved the court's time and resources, preventing the matter proceeding to trial. It is also submitted that you are very remorseful for your actions and that is demonstrated in the plea you had entered.

It is further submitted that the Court consider your youthfulness as you are a child.

Personal Circumstances of Joe Alufurai:

It is submitted on your behalf that you are 16 years of age and still single. You were a grade six student at Bubunuhu Community High School, Aola area, in Guadalcanal Province. It is submitted that you did not complete his education after his mid-semester break in July because of this case. I am told that you are determined to go back to school and complete your education. You are the third born child in a family of five.

Matter in mitigation for Joe Alufurai:

The Court is urged to consider the following mitigating factors in your favour;

That you had pleaded guilty which shows your willingness to admit the offence and face the consequences. It is submitted that you are remorseful for your actions as demonstrated in the guilty plea entered. I was told that you have regretted your actions which has impacted the progress of your education. It is also submitted that you had cooperated with the Police and informed the Police in your Record of Interview how the burglary was conducted. It is further submitted that you have no previous criminal conviction. Your Lawyer also submitted that your level of participation in the offending was minimal and that you are a young offender who still has a future ahead of you.

Legislative guide to dealing with juveniles:

Section 12 of the **Juvenile Offenders Act** provides;

"No young person shall be sentenced to imprisonment if he can be suitably dealt with in any other way specified in Section 16."

Section 16 provides:

"Where a child or young person charged with any offence is tried by any court, and the court is satisfied of his guilt the court shall take into consideration the manner in which, under the provisions of this or any other Act or law enabling the court to deal with the case, the case should be dealt with, and, subject to such provisions, may deal with the case in any of the following manners or combination thereof, namely—

- (a) by dismissing the case; or*
- (b) by discharging the offender on his entering into a recognisance, with or without sureties; or*
- (c) by dealing with the offender under the provisions of the Probation of Offenders Act; or*
- (d) by committing the offender to the care of a relative or other fit person; or*
- (e) by ordering the offender to pay a fine, damages or costs; or*
- (f) by ordering the parent or guardian of the offender to pay a fine, damages or costs; or*
- (g) by ordering the parent or guardian of the offender to give security for his good behaviour; or*
- (h) by directing that he be released on his entering into a bond to appear and receive sentence when called upon; or*
- (i) by committing the offender to custody in a place of detention; or*
- (j) where the offender is a young person, by sentencing him to imprisonment; or*
- (k) by dealing with the case in any other manner in which it may be legally dealt with:*

Provided that nothing in this section shall be construed as authorising the court to deal with any case in any manner in which it could not deal with the case apart from this section."

In *Mala v R* [2021] SBHC 131; HCSI-CRC 155 of 2021 (26 October 2021), Justice Bird observed the status of juveniles in the Criminal Justice System of this Country and echoed the need for courts to observe the provisions of the Juvenile Offenders Act. She said;

"Juveniles are treated differently in our criminal justice system and that is why there is a separate and distinct law that deals with cases by juveniles. In sentencing of juvenile offenders the whole provisions of the Act must be observed and taken into account by the courts."

This Court couldn't agree more.

Comparative Cases:

In *Mala v R* [2021] SBHC 131; HCSI-CRC 155 of 2021 (26 October 2021), the appellant appealed against sentence imposed by the Magistrates Court. The appellant was sentenced to 1 ½ years imprisonment for the offence of housebreaking and committing felony contrary to section 300 (a) of the Penal Code (cap 26). The maximum penalty for that offence is 14 years imprisonment. He complained that the sentence was manifestly excessive. He was 17 years old. Having heard arguments and taking into account the cases relied upon by counsel, Justice Bird was of the view that the sentence imposed by the learned Principal Magistrate was manifestly excessive and imposed an alternative sentence of 6 months imprisonment and a good behaviour bond of \$100.00 for a period of 12 months. She was also of the view that the learned Principal Magistrate had erred in not particularly turning her mind to the provisions of section 12 (2) and section 16 of the **Juvenile Offenders Act**.

Sentence orders:

In the interest of delivering justice in this case, I have chosen to exercise my sentencing discretion under Section 16(f) and Section 16(k) of the **Juvenile Offenders Act**. These provisions empower the court to address the matter through any legally permissible means.

After carefully reviewing the case, including the relevant facts and aggravating factors, I have determined that a starting point of 16 months imprisonment is appropriate. However, considering the individual circumstances of the defendants and the mitigating factors, including their respective levels of involvement in the crime, I have adjusted their sentences accordingly.

For Junior Kopu, a reduction of six months is warranted, resulting in a final sentence of 10 months imprisonment. In the case of Joe Alufurai, an eight-month reduction is appropriate, leaving him with a final sentence of eight months imprisonment.

Despite these sentences, I find that placing the defendants in prison would not align with the primary objectives of the **Juvenile Offenders Act**. Therefore, I order that their prison terms be fully suspended for a period of two years, contingent upon their adherence to a good behaviour bond of \$400.

To uphold the principle of deterrence, I will additionally impose monetary fines, which shall be borne by the defendants' parents. Given that both defendants are present in court with their respective mothers, I order that Junior Kopu's fine be set at \$400, while Joe Alufurai's fine is set at \$300.

Having heard from the defendants' mothers regarding their ability to pay, I direct that Junior Kopu's mother must settle the fine by the end of today. As for Joe Alufurai, his mother is granted an extension until the close of business on February 13, 2025, to make the payment. In the event of non-payment, a default penalty of 20 days imprisonment shall apply to both fines.

A side remark:

Let me remind both mothers, as mothers, you have a crucial role in guiding your sons toward a better path, especially now that they have been convicted and sentenced. They are still young and have a long journey ahead, and it is your responsibility to discourage them from engaging in such behaviour again. Ensure that they stay away from bad company, as negative influences often lead them further down the wrong road. Additionally, do not allow them to stay out late at night with their peers, as doing so increases the risk of them getting involved in criminal activities. With your firm guidance and support, they still have the chance to change and build a better future for themselves.

