

IN THE HIGH COURT OF FIJI
AT SUVA
[CRIMINAL JURISDICTION]

CRIMINAL CASE NO. HAC 290 OF 2018

BETWEEN :

STATE

AND :

SAIMONI COLATI

Counsel :

Ms. S. Sharma for the State
Ms. L. David for the Accused

Date of Hearing :

25th September 2018

Date of Sentence :

12th October 2018

SENTENCE

1. Mr. Saimoni Colati, you have freely and voluntarily pleaded guilty to the counts of aggravated burglary and theft at the first opportunity. I am satisfied and convinced that you have pleaded so, unequivocally and having understood the consequences of such a plea.
2. You are charged as follows;

COUNT ONE

Statement of Offence

AGGRAVATED BURGLARY: Contrary to section 313 (1)(a) of the Crimes Act of 2009.

Particulars of Offence

Saimoni Colati, with another, on the 29th of June, 2018, at Navua in the Central Division, entered into Ram Sami Poultry Farm as trespassers with intent to commit theft therein.

COUNT TWO

Statement of Offence

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

Particulars of Offence

Saimoni Colati, with another, on the 29th of June, 2018, at Navua in the Central Division,, dishonestly appropriated 5 trays of Eggs valued at \$65.00, the property of Ram Sami Poultry Farm, with the intention of permanently depriving the said Ram Sami Poultry Farm of the said property.

3. Summary of Facts were submitted by the State and read over and explained to you. Saimoni Colati, you having understood, admitted the said summary of facts to be true and correct.
4. Summary of facts state that,

The Complainant is Tikiko Delai, 41 years old, Chief Security of Ram Sami Poultry, Wainadoi.

The Accused is Saimoni Colati, 21 years old, Security Officer living at Wainadoi Settlement.

On 28th of June 2018, the complainant was on duty. His duty starts at 5.00 pm and finishes at 7.00 am, on the following morning.

At around 2.00 am on the 29th of June 2018, whilst he was on duty, the complainant went to check a water leakage from the pipe at shed no.2 and to fix it. After fixing the leakage, he has gone to the shed no. 1.

When checking the shed, the complainant has seen two I-Taukei men on the other end, passing the shed and going towards the fence.

The complainant has followed them out of the fence towards the road that was going back to Wainadoi.

When the complainant got closed to them, he turned on the torch and then saw the accused.

Both of them ran and the complainant followed them, until they reached one house where a police officer assisted the complainant. When they reached the house, one man told the complainant and the police officer that the two men were behind his house.

Then the complainant and the police officer gone behind the house and managed to apprehend the accused.

The complainant has questioned the accused and the accused has told that they stole five trays of eggs.

The cost of the 5 trays of eggs is \$65.00.

When the complainant was following, he has seen broken eggs on the road, and when he got back, he has seen that the fence of the shed no.1 was forced open and the accused and his accomplice has gained entry from there.

On 1st of July 2018, whilst cleaning the back yard and the surrounding areas, Penisimani Faleafa recovered 4t rays of eggs beside a creek. He showed it to his mother and the police were informed and handed it over to them on the same day.

The accused was caution interviewed on 29th of June 2018, and he has admitted trespassing in to Ram Sami poultry Farm with another to steal eggs. He has admitted further, that they stole 5 trays of eggs.

The value of the recovered 4 trays of eggs is \$52.00.

5. I find that the admitted facts support all elements of the charges in the Information, and find the charges proved on the Summary of Facts agreed by you. Accordingly, I find you guilty on your own plea and I convict you for the offences of Aggravated Burglary and Theft as charged.
6. A person who enters a building with one or more other persons as a trespasser, with the intention to steal commits an aggravated burglary punishable by 17 years' imprisonment under section 313(1)(a) of the Crimes Act. Theft is committed if a person dishonestly appropriates property belonging to another with the intention to permanently depriving him of the property. The maximum penalty for theft is 10 years imprisonment under section 291 of the Crimes Act.

7. The accepted tariff for Aggravated Burglary is 6 to 14 years imprisonment. Though there is some uncertainty, in respect of the recommended tariff, as I have reasoned out in **State v Chand** - Sentence [2018] FJHC 830; HAC44.2018 (6 September 2018), I prefer to follow Hon. Justice Perera in **State v Naulu** - [2018] FJHC 548 (25 June 2018), as it gives effect to the intention of the legislature, best.

As for the offence of theft the accepted tariff would range from 2 months to 3 years (**Ratusili v State** [2012] FJHC 1249; HAA 011.2012).

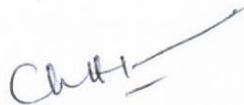
8. The two offences you have committed are founded on the same facts. Therefore, according to section 17 of the Sentencing and Penalties Act, it would be appropriate to impose an aggregate sentence against you, for the two offences you have committed. Section 17 of the Sentencing and Penalties Act 2009 ("Sentencing and Penalties Act") states;

"If an offender is convicted of more than one offence founded on the same facts, or which form a series of offences of the same or a similar character, the court may impose an aggregate sentence of imprisonment in respect of those offences that does not exceed the total effective period of imprisonment that could be imposed if the court had imposed a separate term of imprisonment for each of them."

9. There are not many aggravating factors present in your case other than the intrusion occurred at the middle of the night/soon after the mid night. Further, these types of offences have increased due to the leniency they are dealt with and society now demands an unsympathetic and/or stern judicial approach on these types of offences in order to curtail them.
10. The mitigating factors are your expression of remorse, cooperating with the police to the maximum, Value of the stolen articles are minimal and the recovery of the majority of the stolen items.
11. I would select 6 years as the starting point of your aggregate sentence. I would enhance 1 year due to aggravating factors mentioned above and deduct 3 years in view of the above mitigating factors. Now your sentence is an imprisonment term of 4 years. Considering your early guilty plea through which you have saved this court's time and resources, you will be given a discount of one-third. Accordingly, your final aggregate sentence is an imprisonment term of 32 months. You have spent about 4 days in remand. In lieu of that, I deduct 1 week

from your final sentence of which the remainder, you'd have to serve being 31 months and three weeks. Taking into account all the circumstances of this case, the non-parole period I would fix in view of the provisions of section 18 of the Sentencing and Penalties Act would be 18 months.

12. Now I will consider the provisions of section 26(1) of the Sentencing and Penalties Act.
13. Saimoni Colati, you have no previous convictions or pending cases. Further, you are only 24 years of age. Therefore, in consideration of the submissions made on your behalf, I am of the view it is nothing but fair that you should be given an opportunity to mend your ways and become good law abiding citizen. In result, your sentence of 31 months and three weeks of imprisonment is suspended for a period of 5 years.
14. The consequences of a violation of the suspended term of imprisonment will be explained to you by the Court clerk.
15. Your non-parole period would be relevant only in the event you are to serve the above suspended terms.
16. You have 30 days to appeal to the Court of Appeal if you so desire.


Chamath S. Morais
JUDGE



At Suva
09th October 2018

Solicitors : *Office of the Director of Public Prosecutions for the State
Legal Aid Commission, Suva for the Accused*