

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

CRIMINAL CASE NO. HAC 273 OF 2018

BETWEEN : **STATE**

AND : **YAMENATAVE YAVALA**

Counsel : *Ms. U. Tamanikaiyaroi for the State*
Ms. L. David for the accused

Date of Hearing : *09th November 2018*
Date of Sentence : *13th November 2018*

SENTENCE

1. Mr. Yamenatave Yavala, 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

YamenataveYavala, with others, between the 15th and 16th day of June, 2018, at Suva in the Central Division, with each other entered into the property of Abdul Rehman as trespassers with intent to commit theft.

COUNT TWO

Statement of Offence

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

Particulars of Offence

Yamenatave Yavala, with others, between the 15th and 16th day of June, 2018, at Suva in the Central Division, with each other, dishonestly appropriated 1 x school bag containing his text books, 1 x I-Pad black in colour valued at \$1,200.00, 1 x laptop apple brand black in colour valued at \$900.00, 1 x Samsung mobile phone valued at \$300.00, 1 x Nokia mobile phone valued at \$150.00 all to the total value of \$2,550.00 the property of Abdul Rehman, with the intention to permanently deprive Abdul Rehman of the said properties.

3. Summary of Facts were submitted by the State and read over and explained to you. Yamenatave Yavala, you having understood, admitted the said summary of facts to be true and correct.
4. Summary of facts state that,
 - i) On the 15th day of June 2018 at around 10pm, Abdul Rehman “the complainant” after ensuring that his house at lot 11, Burerua Street, Laucala Bay was secure, went to sleep.
 - ii) On the 16th of June 2018, the next morning the complainant woke up and noticed that the following items had been stolen:
 - a) 1 x school bag containing his text books;
 - b) 1 x Apple I-pad black in colour valued at \$1,200.00;
 - c) 1 x Laptop Apple brand black in colour valued at \$900.00;
 - d) 1 x Samsung mobile phone valued at \$300.00;
 - e) 1 x Nokia mobile phone valued at \$150.00All to the total value of \$2,550.00 the property of the complainant.
 - iii) On 18th of June, the accused was arrested and interviewed under caution at Raiwaqa Police station by DC 5466 Apisai Noga. Upon having the allegations put to him, he admitted to entering the complainant’s house

with his friends through the main gate then entering the sitting room and bedroom where he then stole the school bag and mobile phone.

- iv) The accused further admitted leaving the school bag with the text books in front of Sardar Supermarket and selling an Apple I-pad to a USP student for \$100.00 that he later used to buy alcohol at Friends Nightclub.
 - v) From the items stolen in the paragraph ii) Police recovered 1 x Samsung Mobile phone from the accused person.
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. Burglary of home must be regarded a serious offence. A home is a private sanctuary for a person. People are entitled to feel safe and secure in their homes. Any form of criminal intrusion of privacy and security of people in their homes must be dealt with condign punishment to denounce the conduct and deter others. As Lord Bingham CJ in **Brewster 1998 1 Cr App R 220** observed at 225:

“Domestic burglary is, and always has been, regarded as a very serious offence. It may involve considerable loss to the victim. Even when it does not, the victim may lose possessions of particular value to him or her. To those who are insured, the receipt of financial compensation does not replace what is lost. But many victims are uninsured; because they may have fewer possessions, they are the more seriously injured by the loss of those they do have. The loss of material possessions is, however, only part (and often a minor part) of the reason why domestic burglary is a serious offence. Most people, perfectly legitimately, attach importance to the privacy and security of their own homes. That an intruder should break in or enter, for his own dishonest purposes, leaves the victim with a sense of violation and insecurity. Even where the victim is unaware, at the time, that the burglar is in the house, it can be a frightening experience to learn that a burglary has taken place; and it is all the more frightening if the victim confronts or hears the burglar. Generally speaking, it is more frightening if the victim is in the house when the burglary takes place, and if the intrusion takes place at night; but that does not mean that the offence is not serious if the victim returns to an empty house during the daytime to find that it has been burgled. The seriousness of the offence can vary almost infinitely from case to case. It may involve an impulsive act involving an object of little value (reaching through a window to take a bottle of milk, or stealing a can of petrol from an outhouse). At the other end of the spectrum it may involve a professional, planned organization, directed at objects of high value. Or the offence may be deliberately directed at the elderly, the disabled or the sick; and it may involve repeated burglaries of the same premises. It may sometimes be accompanied by acts of wanton vandalism.”

10. There are not many aggravating factors mentioned above present in your case other than the fact that this invasion occurred at 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.
11. The mitigating factors are your expression of remorse, cooperating with the police and that you are only 18 years of age and being of good behavior up to this incident.
12. 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 little more than a month in remand. In lieu of that, I deduct 1 month from your final sentence of which the remainder, you'd have to serve will be 31 months. 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 20 months.
13. Now I will consider the provisions of section 26(1) of the Sentencing and Penalties Act.
14. Yamenatave Yavala, you have no previous convictions or pending cases. Further, you are only 18 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, the majority that is 30 months of your sentence of 31 months of imprisonment is suspended for a period of 5 years. In consideration of the value of the stolen items, 1 month from your sentence is made operational with immediate effect.
15. The consequences of a violation of the suspended term of imprisonment will be explained to you.

16. Your non-parole period would be relevant only in the event you are to serve the above suspended term.
17. You have 30 days to appeal to the Court of Appeal if you so desire.


Chamath S. Morais
JUDGE



At Suva
13th November 2018

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