

IN THE HIGH COURT OF FIJI
AT SUVA
CRIMINAL JURISDICTION

CRIMINAL CASE NO. HAC 292 of 2018

BETWEEN: **THE STATE**

AND: **1. JONE DRAUNIDALO**
 2. COLIN EDWARD MICHAEL
 3. JOVILISI RAVAYA

Counsel: *Ms. B. Kantharia for the State*
 Ms. L. David for the Accused

Date of Hearing: *10th of August 2018*
Date of Sentence: *29th of August 2018*

SENTENCE

[1] MR. JONE DRAUNIDALO, MR. COLIN EDWARD MICHAEL, MR. JOVILISI RAVAYA, 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, having understood the consequences of such a plea.

[2] You were 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

JONE DRAUNIDALO, COLIN EDWARD MICHAEL and JOVILISI RAVAYA on the 15th day of June 2018 at Navua in the Central Division, entered into ARUN SWEET AND KAVA SHOP as trespassers with intention to commit theft therein.

COUNT TWO

Statement of Offence

Theft: contrary to section 291(1) of the Crimes Act of 2009.

Particulars of Offence

JONE DRAUNIDALO, COLIN EDWARD MICHAEL and JOVILISI RAVAYA on the 15th day of June 2018 at Navua in the Central Division, dishonestly appropriated 20x10 packets of Grog valued at \$200.00, 24x600ml Coca Cola bottles valued at \$57.60, 20x180ml Coca Cola cans valued at \$36.00, Lakri sweet packets valued at \$15.00, 6x Crispies Snacks valued at \$3.00, 7x Chow Noodles valued at \$4.90, 1x Plastic Sealer valued at \$30.00 and loose coins worth \$50.00 all to the total value of \$396.50 the properties of ARUN DEO SINGH with intention of permanently depriving ARUN DEO SINGH of the said properties.

[3] Summary of Facts were submitted by the State and read over and explained to you. Having understood, you admitted them to be true and correct. Summary of facts state that,

- i) The complainant in this matter is Arun Deo Singh, 44 year old, Businessman of Tokotoko, Navua.
- ii) The accused are:
 - a) Jone Draunidalo, 19 years old, unemployed, of Suva
 - b) Colin Edward Michael, 28 years old, unemployed, of Vakabalea Road, Navua
 - c) Jovilisi Ravaya, 19 years old, unemployed of Navua Police Barrack, Navua.
- iii) There is no relationship between the accused and the complainant.
- iv) The complainant operates a shop namely 'Arun Sweets and Kava' located at Darshans building in Navua town.
- v) On 15/06/2018 at about 6.45 am, the complainant received a call from one Ramesh who is a Bus-conductor for Taunovo Bus Company informing him that the door of his shop was open.
- vi) The complainant was alarmed to hear this as he remembered closing his shop properly before leaving for home in the night.
- vii) Complainant reached his shop and saw that the front door was open and upon checking he noticed that the door was forcefully pushed open as the lock was still intact.
- viii) The complainant then called the Navua Police Station and reported the matter.
- ix) Police Officers came and inspected the scene; the complainant then went inside and checked the store for stolen items and accounted for the items stolen in the shop as follows:
 - 1) 20 x Grog packets valued at \$200.00
 - 2) 24x600ml Coca Cola bottles valued at \$57.60,

- 3) 20x180ml Coca Cola cans valued at \$36.00,
- 4) Lakri sweet packets valued at \$15.00,
- 5) 6x Crispies Snacks valued at \$3.00,
- 6) 7x Chow Noodles valued at \$4.90,
- 7) 1x Plastic Sealer valued at \$30.00 and
- 8) loose coins worth \$50.00

The total value of the stolen items and cash amounts to \$396.50

- x) Information was received wherein Jone Draunidalo- Accused 1, Colin Edward Michael- Accused 2, Jovilisi Ravaya- Accused 3 were arrested for questioning.
- xi) Upon caution interview of the Accused 1, he stated that he with the other two accused came out of the Navua Club after drinking and headed to NAVUA town. He further stated that he decided to check which of the shops in the town he could open as he wanted money to buy drinks. He came back and told Accused 2 and Accused 3 that he was going to break into 'Arun Sweet and Kava'.

Accused 1 stated that he told Accused 2 to stand guard and cover the road that went to Matanitobua house whilst the Accused 3 to stand and guard the edge of First Stop shop covering the main street going down to Naitonitoni towards the Market.

Accused 1 then stated that he forcefully pushed the padlock away from the tower bolt and pushed open the door of the shop and went inside alone the first time.

He stated that the second and third time he entered the shop with Accused 2 whilst Accused 3 stood guard.

Accused 1 stated that the first time, he took out the coins from beneath the counter and collected the bottles of Coke from the fridge. The second time he entered into the shop with Accused 2 and he took Lakri sweet packets in one plastic and the third time he entered the shop with Accused 2, when Accused 2 took Noodles, Tin tuna and pounded packed Grog.

- xii) Accused 2 in his record of interview stated that on the day of the alleged incident he met accused 1 and Accused 3 at Navua Club whilst he was drinking there with Nate and Darren. He stated that he did not know the other two Accused's name as he only saw one of the boys before at the billiards shop. He stated that they drank beer there till the club closed and then he and Nate walked to Navua Market.

Whilst he was waiting at Darshans shop corridor, he met Accused 1 and Accused 3 at Navua Club again.

He stated that one of the boys then stated that he was going to break into a shop in town. He said that this was not actually pre-planned, it was a spur of the moment.

He stated that one of the Accused stated that he was going to break in to Arun's shop.

Accused 2 stated that one of the boys went to break Arun's shop whilst he stood guard along the corridor of Darshans covering the main town road, and the other boy while covering the road going to the fire station.

He stated that the boy who broke into the shop came out with a black plastic and he did not know what was inside the plastic and then the boy took them through a short to Red Cross site.

Accused 2 stated that he followed the boy into the shop on the third time and remember grabbing hold of a plastic which had powdered Grog sealed in clear plastic

He stated he remembers there were can and bottle Coke, Grog, the canned tuna, and packet of chow noodles and a plastic sealer which was blue in colour. He stated that they shared the stolen items and that his share of those items was 5x bags of Grog, bottle and a can of Coke.

xiii) Accused 3 in his record of interview states that on the day of the alleged incident he was drinking at the Navua town and reached Vijay's shop where they stopped and smoked cigarette whereby Accused 1 told them he wanted to check which shop he can open to look for money to buy drinks.

He stated that he stood guard at the edge of first shop covering the main street down to Naitonitoni towards the market whilst Colin covered the road that went to Matanitobua House.

He stated that Jone went into the shop and bought a black plastic with him and then went to the Red Cross ground.

Accused 3 stated that the second time accused 1 told him to guard the shop whilst he and accused 2 went inside the shop. And that they came out with some other items and made way to Red Cross ground where they all shared the stolen items.

He stated that he got 1 x plastic of coke which he did not count, 2 x tin tuna, 1 x 5 chow noodles and 2 x twisties.

He further stated that the plastic coke he hide it at the hibiscus flower as soon as they entered the junction and the tuna and noodles he kept at home of which the twisties he already ate.

[4] I find that the admitted facts support all elements of the charge in the Information, and find the charge 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.

[5] 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.

[6] Parties submit that the tariff for Aggravated Burglary is 18 months to 3 years and that tariff has been approved by the Court of Appeal in **Leqavuni v State** [2016] FJCA 31: AAU 106.2014 (26 February 2016). As per Hon. Justice Perera, in **State v Naulu** - [2018] FJHC 548 (25 June 2018)

*“ In my view the judgment in the case of **Leqavuni v State** [2016] FJCA 31; AAU0106.2014 (26 February 2016) does not preclude the High Court from revisiting the tariff for the offence of aggravated burglary for the reason that the appropriateness of the tariff for the offence of aggravated burglary was not an issue before Court of Appeal in that case and therefore that issue was not considered by the Court of Appeal.”*

[7] On careful consideration of the provisions of the Crimes Act 2009, it is apparent that legislature intended to consider Aggravated Burglary as a very serious crime and maximum penalty wise placed it in between the offences of Robbery and Aggravated Robbery. Therefore, it is quite obvious that the offence of Aggravated Burglary should carry a higher tariff than the offence of Robbery. It is well established that the tariff for Robbery is 2 to 7 years. As opined with sound reasoning, by Hon. Justice Perera, in **State v Naulu** [2018] FJHC 548 (25 June 2018) the tariff for Aggravated Burglary is said to be from 6 to 14 years.

[8] I am inclined to agree with Hon. Justice Perera's view and hold the tariff for Aggravated Burglary should be 6 to 14 years.

[9] 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).

[10] The two offences you have committed are founded on the same facts. Therefore, as for 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”) reads thus;

“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.”

- [11] 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.”

- [12] In your case, many of the aggravating factors outlined in Brewster’s case are not present. There was no significant damage done to the property except that the shop was ransacked. Intrusion occurred when the owner was not at the shop. No prior planning was involved.
- [13] The mitigating factors are your early guilty plea, expression of remorse and your depositing in court the value of the stolen articles, to be compensated to the complainant.

[14] I would select 6 years as the starting point of your aggregate sentence. I would deduct 2 years in view of the above mitigating factors. Now your sentence is an imprisonment term of 4 years. In view of 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 all have spent nearly 2 and half months in remand. In lieu of that I deduct 3 months from each of your final sentences. The remainder you'll have to serve would be 29 months. Considering 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 16 months.

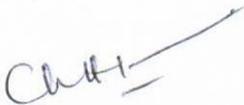
[15] Now I will consider the provisions of section 26(1) of the Sentencing and Penalties Act.

JONE DRAUNIDALO, you have been convicted of the offence of theft on 15/09/2017, and been imposed a sentence of 7 months, which has been suspended for a period of 2 years. You have committed this offence on 15/06/2018, within the operational period of the said suspended sentence. Therefore, 7 months from the sentence which I imposed made operational together with the earlier suspended sentence to run concurrently. The remainder of 22 months imprisonment is suspended for a period of 5 years.

COLIN EDWARD MICHAEL, you have a pending case at the Navua Magistrates' Court. You have committed this offence while being on bail for the said offence. Therefore 3 months from your sentence of 29 months is made operational and the remaining 26 months period is suspended for a period of 4 years.

JOVILISI RAVAYA, you have no previous convictions or pending cases. Since you are a first-time offender, for the purpose of promoting rehabilitation, I would suspend your sentence of 29 months for a period of 3 years.

Therefore, your non-parole period would be relevant only in the event you are to serve the above suspended terms.


Chamath S. Morais
JUDGE



Solicitors:

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