

IN THE HIGH COURT OF FIJI AT SUVA

CASE NO: HAC. 264 of 2019

[CRIMINAL JURISDICTION]

STATE

V

TAITUSI TAWAKE

Counsel : Mr. E. Samisoni for the State
Ms. A. Singh for the Accused

Hearing on : 22 July 2020

Summing up on : 23 July 2020

Judgment on : 24 July 2020

Sentenced on : 31 July 2020

SENTENCE

1. Taitusi Tawake, you were charged with another for the offences of aggravated burglary and theft. After trial, you were found not guilty of the offence of aggravated burglary as charged but guilty of the offence of burglary instead and guilty of the offence of theft as charged. You were convicted accordingly, on 24/07/20.
2. The facts in this case revealed that, on 09th July 2017, you broke into the complainant's house while the complainant was away and stole 1x Simmons television with a remote and 1x radio subwoofer. You were known to the

complainant. The stolen items were recovered by the police as you had abandoned them while you were being chased by the police.

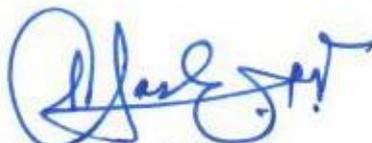
3. Your counsel has submitted that you are 26 years old. You are single. You have a 5 year old daughter and a 4 year old son who reside with their mother. Before you were arrested for this case, you were employed as a carpenter.
4. The tariff for the offence of burglary which carries a maximum penalty of 13 years imprisonment should be a term of imprisonment within the range of 20 months to 06 years. [See *State v Prasad* [2017] FJHC 761; HAC254.2016 (12 October 2017) and *State v Naulu* [2018] FJHC 548 (25 June 2018)]
5. The offence of theft contrary to section 291 of the Crimes Act carries a maximum sentence of 10 years. In the case of *Waqa v State* [HAA 17 of 2015], this court held that the tariff for the offence of theft should be 4 months to 3 years imprisonment.
6. The two offences you are convicted of are founded on the same facts. Therefore, in view of the provisions of section 17 of the Sentencing and Penalties Act 2009 (“Sentencing and Penalties Act”), I consider it appropriate to impose an aggregate sentence of imprisonment against you for the two offences you have committed.
7. I do not find any aggravating factors in this case. The prosecution did not highlight the value of the stolen property. Nevertheless, all the items stolen according to the second count, were recovered. There was no evidence of any substantial damage caused to enter into the property.
8. Neither do I find any mitigating factors. You have three previous convictions. Therefore, you are not entitled to receive a discount for previous good behavior. The stolen items were recovered by the police because you abandoned them while

you were running away from the police. Therefore, the fact that there is full recovery of the stolen items as per the charge cannot be considered in your favour to reduce your sentence.

9. The prosecutor has requested this court to consider declaring you a habitual offender in terms of section 11 of the Sentencing and Penalties Act.
10. You have been convicted of the offence of theft on 20/12/13 by the Nasinu Magistrates Court and on 15/07/14 by Nadi Magistrates Court. Again on 24/11/15 you have been convicted of the offence of robbery where you were sentenced to 24 months imprisonment.
11. Section 11 of the Sentencing and Penalties Act reads thus;
 11. – (1) *A judge may determine that an offender is a habitual offender for the purposes of this Part –*
 - (a) *when sentencing the offender for an offence or offences of the nature described in section 10;*
 - (b) *having regard to the offender's previous convictions for offences of a like nature committed inside or outside Fiji; and*
 - (c) *if the court is satisfied that the offender constitutes a threat to the community.*
12. The offence you have committed in relation to this case is an offence that comes within the purview of section 10 of the Sentencing and Penalties Act. However, having considered the three previous convictions and the circumstances of the offending in this case, I am not persuaded that you should be regarded a threat to the community at this stage. Therefore, I am not inclined to declare you as a habitual offender.
13. The offence of burglary is a prevalent offence in this country. Taking into account the said fact I would select 24 months as the starting point of your aggregate sentence for the two offences you have committed.

14. Since there are no aggravating or mitigating factors, there are no adjustments to be made to the starting point.
15. Accordingly, your final aggregate sentence is an imprisonment term of 24 months. I would exercise the discretion granted in terms of the provisions of section 18(3) of the Sentencing and Penalties Act to refrain from fixing a non-parole period.
16. I have decided not to suspend your sentence given the three previous convictions.
17. It is submitted that you were arrested for this matter on 16/07/19. Accordingly, you have been in custody for a period of 12 months and 15 days. The said period shall be regarded as a term already served by you in terms of the provisions of section 24 of the Sentencing and Penalties Act.
18. In the result, you are sentenced to a term of 24 months imprisonment. Considering the time spent in custody, the time remaining to be served is 11 months and 15 days.
19. Thirty (30) days to appeal to the Court of Appeal.




Vinsent S. Perera
JUDGE

Solicitors;

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