

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

**CRIMINAL CASE NO. HAC 088 OF 2018**

**BETWEEN** :

**STATE**

**AND** :

1. **ALIPATE VULAGI,**
2. **TOUVEA TAUNTEANG OTEN PARERE**

*Counsel* :

*Mr. Z. Zunaid for the State*  
*Ms. L. Manulevu for the 1st Accused*  
*Mr. K. Chang for the 2nd Accused*

*Date of Hearing* :

*18<sup>th</sup> October 2018*

*Date of Sentence* :

*23<sup>rd</sup> October 2018*

## **SENTENCE**

1. The 1<sup>st</sup> Accused Mr. Alipate Vulagi was born on 18/06/2000, though a juvenile when the alleged crimes were committed, since has come of age, and need not be treated as a Juvenile. His immaturity would be given appropriate consideration in due course.
2. Mr. Alipate Vulagi and Mr. Touvea Taunteang Oten Parere, you have freely and voluntarily pleaded guilty to the counts of Aggravated Burglary, Burglary and Theft, that you were charged with at the first opportunity. I am satisfied and convinced that you have pleaded so, unequivocally, having understood the consequences of such a plea.
3. 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*

Alipate Vulagi and Touvea Taunteang Oten Parere, in company of each other, on the 06<sup>th</sup> day of February, 2018, at Navua in the Southern Division, entered into the property of Rajendra Deo Prasad 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*

Alipate Vulagi and Touvea Taunteang Oten Parere, on the 06<sup>th</sup> of February, 2018 in the company of each other, at Navua in the Southern Division, dishonestly appropriated 6 x Atlas, 8 x cans of Bounty Rum & Cola, 4 x Woodstock, 4 x 20 packet BH Cigarettes, 1 x 26 oz Alcohol, and 6 x long neck bottles of Fiji Bitter Beer, all to the total approximate value of \$209.83, the properties of Rajendra Deo Prasad with the intention to permanently depriving Rajendra Deo Prasad of the said properties.

## **COUNT THREE**

### *Statement of Offence*

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

### *Particulars of Offence*

Alipate Vulagi and Touvea Taunteang Oten Parere, in company of each other, on the 11<sup>th</sup> day of February, 2018, at Navua in the Southern Division, entered into the property of Rajendra Deo Prasad as trespassers with intent to commit theft.

## **COUNT FOUR**

### *Statement of Offence*

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

### *Particulars of Offence*

Alipate Vulagi and Touvea Taunteang Oten Parere, on the 11<sup>th</sup> of February, 2018 in the company of each other, at Navua in the Southern Division, dishonestly appropriated 6 x 20 packet BH Cigarettes, 1 x carton of Bounty Rum (26oz containing 6 bottles), 1 x Champagne, 6 x Whiskey 40 oz (Black Label), Half carton Whiskey (containing 12 x 375 ml), 2 x White Wine, 6 x bottles of Vonu Beer, 2 x Sprite (2.25 liters), 2 x packet Peanut Ruff's, 2 x bottles of Rum (26 oz), 1 x bottle of Whiskey (26 oz), 4 x cans of Vonu and 10 x bottles of Whiskey (375 ml), all to the total approximate value of \$1827.45, the properties of Rajendra Deo Prasad with the intention to permanently depriving Rajendra Deo Prasad of the said properties.

## **COUNT FIVE**

### *Statement of Offence*

BURGLARY: Contrary to section 312 (1) of the Crimes Act of 2009.

*Particulars of Offence*

Alipate Vulagi, on the 15<sup>th</sup> day of February, 2018, at Navua in the Southern Division, entered into the property of Rajendra Deo Prasad as trespassers with intent to commit theft.

**COUNT SIX**

*Statement of Offence*

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

*Particulars of Offence*

Alipate Vulagi, on the 15<sup>th</sup> of February, 2018 at Navua in the Southern Division, dishonestly appropriated, 1 x Whiskey (750 ml), 4 x Whiskey (375 ml), 1 x Champagne, 1 x Passion Pop, 1 x Bounty Rum (26oz), 1 x White Wine, 2 x Big Peanut Ruff's, 2 x Sprite (2.25 liters) and 1 x Regal Dry Gin (1125 ml) all to the total approximate value of \$344.96, the properties of Rajendra Deo Prasad with the intention to permanently depriving Rajendra Deo Prasad of the said properties.

4. Summary of Facts were submitted by the State and read over and explained to you. Alipate Vulagi and Touvea Taunteang Oten Parere, both of you, having understood, admitted the said summary of facts to be true and correct.
5. Summary of facts state that:

The first Accused is Alipate Vulagi (**A1**), 17 years old at the time of the alleged offences, Labourer at Rar's Service Station.

The second Accused is Touvea Taunteang Oten Parere (**A2**), 33 years old, Carpenter at Rar's Service Station.

The Complainant in this matter is Rajendra Prasad, 57 years old, Businessman of Tokotoko Highway, Navua.

- i). The Complainant is the owner of Rar's Service Station located in Navua. The Service Station has a Supermarket in which the Liquor is sold.
- ii). A1 & A2 were both employed by the complainant and worked at the service station/supermarket at all times material to the offences.
- iii). On the 15<sup>th</sup> of February one of the complainant's staff has brought to his attention of an issue regarding a missing carton of Bounty Rum and Cigarettes from their store.
- iv). The Complainant having viewed the CCTV footage, has seen two men breaking into the store on 6<sup>th</sup> of February, and identified one as A1. Further, again on 11<sup>th</sup> of February two men had broken into the supermarket, whom the Complainant

identified as A1 and A2. On 15<sup>th</sup> of February, for the third time The A1 has broken into the supermarket alone and stolen.

- v). Both A1 and A2 in the company of each other, had on the 6<sup>th</sup> of February 2018, broken into the Rar's Supermarket after normal working hours and dishonestly appropriated 6 x Atlas, 8 x cans of Bounty Rum & Cola, 4 x Woodstock, 4 x 20 packet BH Cigarettes, 1 x 26 oz Alcohol, and 6 x long neck bottles of Fiji Bitter Beer, all to the total approximate value of \$209.83.
- vi). A1 and A2, further in the company of each other, had on the 11<sup>th</sup> of February 2018, broken into the Rar's Supermarket after normal working hours and dishonestly appropriated 6 x 20 packet BH Cigarettes, 1 x carton of Bounty Rum (26oz containing 6 bottles), 1 x Champagne, 6 x Whiskey 40 oz (Black Label), Half carton Whiskey (containing 12 x 375 ml), 2 x White Wine, 6 x bottles of Vonu Beer, 2 x Sprite (2.25 liters), 2 x packet Peanut Ruff's, 2 x bottles of Rum (26 oz), 1 x bottle of Whiskey (26 oz), 4 x cans of Vonu and 10 x bottles of Whiskey (375 ml), all to the total approximate value of \$1827.45.
- vii). A1 then alone on 15<sup>th</sup> of February 2018, broke into the Rar's Supermarket after normal working hours and dishonestly appropriated, 1 x Whiskey (750 ml), 4 x Whiskey (375 ml), 1 x Champagne, 1 x Passion Pop, 1 x Bounty Rum (26oz), 1 x White Wine, 2 x Big Peanut Ruff's, 2 x Sprite (2.25 liters) and 1 x Regal Dry Gin (1125 ml) all to the total approximate value of \$344.96.
- viii). The matter was reported to the police, A1 and A2 having arrested been interviewed under caution. A1 and A2 had admitted the commission of the alleged offences in their caution interviews.
- ix). The police has recovered the following, being a part of the stolen Items, on the information provided by the A1.
  - 1 x 1125ml Regal London Dry Gin
  - 1 x 1lt Bounty Rum
  - 1 x 750ml Regal Deluxe Whiskey
  - 1 x 750ml Sacred Hill Shiraz Wine
  - 1 x 750ml Sacred Hill Brut Cuvee Wine
  - 1 x 750ml Mixed Berry Passion Pop Wine
  - 2 x 375ml Regal Special Blended Whiskey
  - 1 x 375ml Regal Deluxe Whiskey Blended.

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; A1, Alipate Vulagi, I find you guilty on your own plea and I convict you for the offences of 2 Counts of Aggravated Burglary, 1 Count of Burglary and 3 Counts of Theft as charged.

A2, Touvea Taunteang Oten Parere, I find you guilty on your own plea and I convict you for the offences of 2 Counts of Aggravated Burglary and Two Counts of 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. A person who enters a building to commit theft, commits Burglary and punishable with 13 years' imprisonment as for section 312(1) 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** - 2018 Sentence [2018] FJHC 830; HAC44.2018 (06 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.

The tariff for the offence of Burglary has varied between 12 months to 3 years imprisonment. This tariff has been adopted in several decided cases: **Waqavanua v. State** [2011] FJHC 247; HAA 13.2011 (6 May 2011); **Gonerogo v. State** [2013] FJHC 163; HAA 22.2012 (5 April 2013); **State v. Seninawanawa** [2015] FJHC 261; HAC 138.2012 (22 April 2015); **Talakuba v. State** [2016] FJHC 1121; HAA 37.2016 (13 December 2016); **Vuli v. State** [2017] FJHC 17; HAA 53.2016 (23 January 2017); and **State v. Mate** [2018] FJHC 249; HAC 76.2018 (3 April 2018).

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. Section 17 of the Sentencing and Penalties Act of 2009 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."*

The offences you have committed form a series of offences of the same/similar character. Therefore, accordingly, it would be appropriate to impose an aggregate sentence against you, for the offences you have committed.

9. The aggravating factors present in your case are;
  - a) The intrusions occurred at the middle of the night/soon after the midnight.
  - b) Both of you have violated the trust of your employer placed upon you.
  - c) 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,
  - co-operating with the police to the maximum and
  - the recovery of some of the stolen items.
11. A1, Alipate Vulagi, You have been a juvenile at the time of the committal of the offences and may have lacked the ability to understand the gravity of these offences. Yet, you admitted to have committed 2 counts of Aggravated burglary, a Burglary and 3 Counts of Theft. In consideration of all these, I would select 8 years as the starting point of your aggregate sentence.
- A2, Touvea Taunteang Oten Parere, you admitted to have committed 2 counts of Aggravated burglary and 2 Counts of Theft. Further, you have been in remand twice, aggregating to about 1 and half months, spent in remand. In consideration of all these, I would select 8 years as the starting point of your aggregate sentence.
12. I would enhance 1 year due to aggravating factors mentioned above and deduct 3 years in view of the above mitigating factors. Now each of your aggregate sentence is an imprisonment term of 6 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 4 years. I would set the non-parole period at 2years.
- Though, A2, Touvea Taunteang Oten Parere, seems to have been in remand for a period of nearly 1 month and 15 days. As I have paid due consideration to it in setting the starting point, I decide to not to give any further discount.
13. It would be unnecessary to consider the provisions of section 26 (1) of the Sentencing and Penalties Act, as the aggregate sentence exceeds 3 years of imprisonment.
14. You have 30 days to appeal to the Court of Appeal if you so desire.

  
Chamath S. Morais  
JUDGE



At Suva  
23<sup>rd</sup> October 2018

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