

IN THE HIGH COURT OF FIJI
AT SUVA
APPELLATE JURISDICTION

Criminal Appeal No: HAA 106 of 2008

Between: **TIMOCI SERUKALOU**
Appellant

And: **THE STATE**
Respondent

Hearing: 16th January 2009
Judgment: 23rd January 2009

Counsel: Appellant in person
Ms N. Tikoisuva for State

JUDGMENT

[1] The Appellant was charged with the offence of housebreaking entering and larceny and convicted on his plea of guilty. The charge was that on the 3rd of October 2005 at Suva, he broke and entered the home of Joanne Rose Reiher and stole a pair of canvass shoes valued at \$120. He appeals against his sentence of 2 years imprisonment.

[2] The case was first called on the 11th of October 2005 in the Suva Magistrates' Court. The Appellant asked for time to get legal advice and he was released on bail until the 3rd of November 2005. On that date he failed to appear and a bench warrant was issued. On the 11th of January the court issued a production order and the Appellant appeared on the 20th of February 2006. He then pleaded guilty to the offence.

[3] The facts were that on the 3rd of October 2005, the complainant's housekeeper went to the complainant's house at Vaivai Place, Flagstaff to start work. The house had earlier been locked and secured by the complainant when she left to go to work. The housekeeper heard a sound from inside the house and saw the Appellant walk out wearing the stolen shoes.

[4] The housekeeper found the house to be in disarray but only the shoes were missing. The Appellant was traced and interviewed under caution. He admitted entering the house by removing louvre blades from the kitchen window and said that he was disturbed in the commission of the offence by the housekeeper. The shoes were recovered.

[5] These facts were admitted by the Appellant. He also admitted a total of 64 previous convictions, most of which are for breaking and entering and said that he was 30 years old, was single and a serving prisoner until 2007.

[6] The matter was then adjourned for sentence to the 6th of March 2006. On that day he did not appear, presumably because he was still in custody. He next appeared under bench warrant, on the 2nd of July 2008, saying he had forgotten that he was still to be sentenced for this case.

[7] The learned Magistrate proceeded to deliver sentence. He found the tariff was 2 to 3 years and that the Appellant was a habitual offender who spent his life going in and out of prison. He started at 2 years imprisonment and after adjusting for aggravating and mitigating circumstances, sentenced the Appellant to 2 years imprisonment.

[8] The Appellant says that this sentence is harsh and excessive. I cannot agree. The sentence of 2 years imprisonment is within the tariff for breaking and entering cases and the Appellant would undoubtedly have stolen more if he had not been disturbed by the housekeeper. He has been offending since July 1996 and on many occasions was given non-custodial sentences by the court to give him another chance. He has consistently let the court down. His track record is discouraging and the courts have a duty to protect the community from offenders who make a habit of breaking into other people's houses and stealing without any regard or respect for private property.

[9] I decline to reduce this sentence. This appeal is dismissed.

Nazhat Shameem
JUDGE

At Suva
23rd January 2009