

**IN THE HIGH COURT OF FIJI**  
**AT LABASA**  
**CRIMINAL JURISDICTION**

**Criminal Case No. HAC 007 of 2009**

**BETWEEN:**

**GABIRIELI BULI**

***Appellant***

**AND:**

**STATE**

***Respondent***

**Date of Hearing:** 28<sup>th</sup> August 2009

**Date of Judgment:** 4<sup>th</sup> September 2009

**Counsel:** Appellant in person  
Mr. M. Kaisamy for State

**JUDGMENT**

[1] The appellant was convicted on his own plea of guilty to one count of house breaking entering and larceny. The particulars of the offence read:

“GABIRIELI BULI, on the 17<sup>th</sup> day of March, 2009 at Lomalagi Resort, in the Northern Division broke and entered into the dwelling house of COLLIN MCKENNY and stole from therein a DELL brand computer valued at \$3000.00 and BUSHNELL brand binoculars valued at \$300.00, to the total of \$3,300.00, the property of the said COLLIN MCKENNY.”

- [2] On 26 March 2009, the appellant was sentenced to two years imprisonment. He appeals against sentence saying it is harsh and excessive and that he was unrepresented when he was sentenced.
- [3] The tariff for house breaking offences is between 2 years to 3 years imprisonment (***Tuisoba v The State*** [2003] FJHC 91; HAA0098J.2002S (28 February 2003)). Suspension of sentence is reserved for a first time and a young offender (***Turuturuvesi v State*** HAA86/02S).
- [4] The facts in the present case were that the appellant entered the house of the complainant during the daytime after finding it was vacant. He stole a computer and binoculars from the house. The total value of the items was \$3,300.00. The appellant committed the offence in a state of intoxication. He sold the binoculars and kept the computer.
- [5] The items were recovered following the appellant's arrest and upon information provided to the police by him.
- [6] In his sentencing remarks, the learned Magistrate considered the early guilty plea, remorse, cooperation with police, recovering of items and the appellant's age and family circumstances as the mitigating factors. The aggravating factor considered by the learned Magistrate was that the appellant had planned the offence.

- [7] The appellant was not a first time offender. He has seventeen previous convictions since 2003. Most of his convictions are for house breaking offences.
- [8] The learned Magistrate picked three years as the starting point and after adjusting for the mitigating and aggravating factors, sentenced the appellant to two years imprisonment.
- [9] The sentence of two years imprisonment is within the tariff for this type of offence. The appellant is a recidivist and he is not making any effort to reform himself.
- [10] The community needs to be protected from persistent offenders, who have no respect for homes and properties of others.
- [11] Albeit the appellant was unrepresented, the hearing in the Magistrate's Court was fair. The appellant was advised of his right to counsel and he waived his right. According to the court record, the appellant voluntarily and freely pleaded guilty. The learned Magistrate gave considerable weight to the appellant's plea of guilty and also considered it as evidence of remorse. All relevant factors that ought to have been considered were taken into account by the learned Magistrate in the sentence of the appellant.
- [12] No error of law or fact has been shown.

[13] The appeal is dismissed.

[Daniel Goundar]  
**JUDGE**

At Labasa  
Friday 4<sup>th</sup> September 2009

**Solicitors:**  
Appellant in person  
Office of the DPP for State