

**IN THE COURT OF APPEAL**  
**ON APPEAL FROM THE HIGH COURT**

**CRIMINAL APPEAL NO: AAU 0086 OF**  
**2010(HIGH COURT CRIMINAL APPEAL**  
**NO. HAC 0034 OF 2004S)**

**BETWEEN** : JOSAIA USUMAKI *Appellant*

**AND** : THE STATE *Respondent*

**CORAM** : Lecamwasam, JA  
Madigan, JA  
Kumaratnam JA

**COUNSEL** : Appellant in Person  
Ms. J. Prasad for the Respondent

**Date of Hearing** : 11 September 2014

**Date of Judgment** : 25 September 2014

**JUDGMENT**

**Lecamwasam JA:**

- [1] The appellant in this case was sentenced to a term of 10 years imprisonment with a non parole period of 9 years subsequent to pleading guilty for one count of robbery with violence and one count of unlawful use of motor vehicle. The appellant appealed on the sentence to the Court of Appeal and he was granted leave to appeal out of time against sentence. The appellant based his appeal on the following grounds of appeal:

- (i) *Failure to consider the prompt guilty plea*
- (ii) *Failure to consider totality principles*
- (iii) *Failure to consider the matters in respect of the appellant history*
- (iv) *Sentence is harsh and excessive.*

**Failure to Consider the prompt guilty plea**

- [2] The Learned High Court Judge had considered the first ground of appeal in the following words:

*“In this case, there was only one mitigating factor, that is, your guilty plea. This saves the court’s time and the need for the complainant to relive the ordeal in court by giving evidence...”*

- [3] Hence it is crystal clear the learned High Court Judge had taken into consideration the prompt guilty plea. The unrepresented appellant in submitting that the Judge failed to consider his prompt plea of guilty, in reality is saying that not enough credit was given to him for his plea. The Judge in considering the plea, which was entered as soon as the appellant was produced in the High Court, gave a discount of one year only. For such an early plea made at the first possible opportunity deserves more discount than one year from a total of eleven years. A more appropriate discount would be one of three years bringing the sentence down to one of eight years. This ground of appeal succeeds and the appellant’s new term of imprisonment is eight years with a minimum term of seven years.

**Failure to consider totality Principles**

- [4] On the perusal of the order of the High Court Judge it is not clear whether he had adverted his attention to the totality principle. At the time the appellant was produced before Court he had already been serving another term of 13 ½ year imprisonment. When the Judge ordered the term of 10 years imprisonment, the Judge was lenient to a certain degree, by not making it a consecutive term. However the sentence of the appellant does not specify whether the sentence is concurrent or consecutive to the sentences he was already serving. When the sentencing order is silent as to whether

the sentence is concurrent or consecutive the provisions of Section 22 of the Sentencing and Penalties Decree become applicable. Section 22 of the above decree states: *'every term of imprisonment imposed on a person by a court must, unless otherwise directed by the Court be served concurrently with any uncompleted sentence or sentences of imprisonment'*.

- [5] I do not hesitate to confer the concessions the legislature intended to confer on an accused/appellant. Hence I order the ten year imprisonment ordered by the Learned High Court Judge to be concurrent to the term of imprisonment the accused/appellant is already serving.

**Failure to consider the matters in respect of the appellant's history**

- [6] On a perusal of the court record at pages 61 – 63. Prevents me from agreeing with the position taken by the appellant. It is clear the Learned High Court Judge had taken time to verify the history of the accused prior to imposing the sentence. Hence I reject the third ground of appeal.

**Sentence is harsh and excessive**

- [7] In dealing with this ground, one cannot be oblivious to the remarks made by the learned High Court Judge in the following words at page 24 and 25 of the record:

*"this was a home invasion on robbery with violence. The complainant and her three daughters were fast asleep at home in the early hours of 24 September 2009, at about 2.30 am. A home is a place of rest and security. However, you and your friends turned the complainant's home into a warzone when your group broke into the same, armed with pinch bars. Your group subdued the complainant by threatening her. In doing so you and your friends showed total disregard to the complainant's personal safety, let alone, the safety of her three daughters. After threatening the complainant and her three daughters, you and your friends ransacked the house and stole \$61,480.00 worth of properties. Most of these properties were not insured and most were not recovered. People in Fiji work hard to buy and own properties. The*

*complainant obviously worked hard to buy and own her stolen properties. Yet in a matter of minute, the fruits of that hard toil were stolen by you and your friends on 24 September 2009.*

*This was certainly a cowardly attack by you and your friends on four females, a mother and her three daughters. They were unarmed. They were sleeping. They were no threat to anyone. Yet you and your friends arm yourselves with pinch bars and attacked the complainant and her three children."*

[8] The learned High Court Judge, as the trial Judge, was best placed to observe and analyse the factual evidence of the case. Therefore, when considering the above observations of the learned High Court Judge I do not consider the term of 10 years to be harsh or excessive. Nevertheless the learned High Court Judge should have given a lesser term in view of the prompt plea of guilty. Given that I am reducing the period of imprisonment to a term of 8 years.

[9] In view of the above reasoning, the sentence of 8 years is ordered to be served concurrently with his existing sentence of 13 ½ years, starting from the original date of sentence, being 10<sup>th</sup> September 2010. In accordance with Section 19 of the Sentencing and Penalties Decree we fix a new non-parole sentence for all the sentences he is serving of nine years imprisonment.

**Madigan JA:**

[10] I agree with the judgment of Lecamwasam JA and would endorse the proposed order of the court.

**Kumaratnam JA:**

[11] I agree with the contents and the conclusion of the judgment of Lecamwasam JA.

**The Order of the Court :**

A sentence of 8 years is to be concurrent with the existing sentence.



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**Hon. Justice S. Lecamwasam**  
**JUSTICE OF APPEAL**



.....  
**Hon. Justice P. Madigan**  
**JUSTICE OF APPEAL**



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**Hon. Justice P. Kumaratnam**  
**JUSTICE OF APPEAL**