

IN THE COURT OF APPEAL, FIJI
ON APPEAL FROM THE MAGISTRATES COURT
Exercising extended jurisdiction

CRIMINAL APPEAL NO. AAU 71 OF 2017
(High Court HAC 245 of 2016)
(Magistrates Court No: 1099 of 2016 at Suva)

BETWEEN : **SAILASA QALIVERE** *Appellant*

AND : **THE STATE** *Respondent*

Coram : Calanchini P

Counsel : Mr T Lee for the Appellant
Mr M Korovou for the Respondent

Date of Hearing : 27 March 2019

Date of Ruling : 24 May 2019

RULING

[1] The appellant was convicted on his plea of guilty by the Magistrates Court at Suva exercising extended jurisdiction on one count of aggravated robbery contrary to section 311(1)(a) of the Crimes Act 2009. On 11 January 2017 the appellant was sentenced to 8

years 6 months imprisonment. There was no non-parole period fixed by the Court. His co-offender pleaded not guilty.

[2] This is his timely application for leave to appeal against sentence pursuant to section 21(1)(c) of the Court of Appeal Act 1949. Section 35(1) of the Act gives to a single judge of the Court of Appeal power to grant leave. The test for granting leave to appeal sentence is whether there is an arguable error in the exercise of the sentencing discretion. (**Naisua –v- The State** [2013] FJSC 14; CAV 10 of 2013, 30 November 2013.

[3] The grounds of appeal against sentence are:

“(1) That the learned Magistrate erred in law by imposing a sentence deemed harsh and excessive without having regard to the sentencing guideline and applicable tariff for the offence (aggravated robbery) of this nature.

(2) That the learned Magistrate erred in fact and law allowing extraneous or irrelevant matters to guide or affect him when sentencing the appellant.

(3) That the learned Magistrate erred in fact and law in improperly discounting for the mitigating factors to decrease the sentence.”

[4] The particulars of the offence were that the appellant with one other used force on the complainant before robbing him of his cash of \$50.00 and a Nokia mobile phone worth \$90.00.

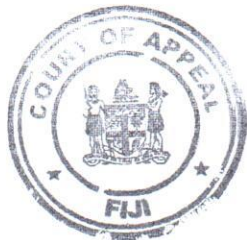
[5] The appellant agreed to the following summary of the facts. The offenders stole the complainant’s mobile phone and cash while he was walking along Victoria Parade towards the bus station.

[6] The Court assessed the plea as unequivocal and proceeded to convict the appellant of aggravated robbery. The force necessary to steal the phone and cash was sufficient to constitute robbery and the fact that there were two offenders involved constituted aggravated robbery.

- [7] The sentence imposed by the Court was determined on the basis that the tariff for aggravated robbery was 8 – 16 years relying on the decision of the Supreme Court in **Wise –v- The State** [2015] FJSC 7; CAV 4 of 2015, 24 April 2015. The Supreme Court was concerned with aggravated robbery in the form of a night time home invasion by a group of armed intruders when the occupants were sleeping. However the form of aggravated robbery in this appeal is often described as “*street mugging*.”
- [8] The approach to be adopted for cases of aggravated robbery in the nature of a “*street mugging*” was discussed by this Court in **Raqauqau –v- The State** [2008] FJCA 34; AAU 100 of 2007, 4 August 2008. The Court indicated that an appropriate tariff in such cases is 18 months to 5 years. Although the decision was delivered in 2008, there has been no move by the appeal courts to interfere with that tariff.
- [9] As a result I have concluded that there has been an arguable error in the exercise of the sentencing discretion and leave to appeal against sentence should be granted.

Order:

Leave to appeal against sentence is granted.



W. Calanchini

Hon Mr Justice W D Calanchini
PRESIDENT, COURT OF APPEAL