

**IN THE HIGH COURT OF FIJI**  
**AT LAUTOKA**  
**APPELLATE JURISDICTION**  
**CRIMINAL MISCELLANEOUS CASE NO.: HAM 10 OF 2014**

**BETWEEN:**                                **SAILOSI NATAKU**  
*Appellant*

**AND:**  **STATE**  
*Respondent*

**Counsels :**                                **Mr. R. Kumar for the Appellant**  
  **Mr. F. Lacanivalu for the Respondent**

**Date of Hearing :**                            **8 May 2014**  
**Date of Judgment :**                        **3 June 2014**

**JUDGMENT**

1. The appellant was charged before the Sigatoka Magistrate in two cases with the charges of obtaining financial advantage by deception contrary to Section 318 of the Crimes Decree.
2. The facts of the cases are that the appellant obtained money from two persons promising them that he will obtain documents for them to go and work in Australia.
3. The appellant pleaded guilty in both cases on the first date 30.12.2013 and admitted the summary of facts same day.
4. He was sentenced on 14.1.2014 for a period of 2 years and 17 days imprisonment with 18 months non-parole period in each case. The sentences to run concurrently.
5. This appeal against the sentence was filed within time on 21.1.2014.
6. The grounds of appeal are :
  - (i) That the appellant was unrepresented when he pleaded guilty to the charges.
  - (ii) That the sentence imposed by the sentencing Magistrate is harsh and excessive.
  - (iii) That the sentencing Magistrate did not take into account his previous good character.
  - (iv) That there is disparity to the appellant's sentence and some other similar offence that was sentenced by the other courts of Fiji.

7. Both parties have filed written submissions. The appellant had restricted his appeal only to the second ground and had stated that the learned Magistrate had failed to give proper discount to his guilty plea. The state in their submission has admitted that the learned Magistrate had failed to give proper discount for appellant's guilty plea.
8. The learned Magistrate had selected a starting point of 2 years following the Guide line judgment *State v Atil Sharma [2010] FJHC 623; HAC 22.2010L*. The tariff accordingly is 2-5 years.
9. Then he had added 18 months for the following aggravating factors.
  - (i) False promises to citizens wishing to travel abroad,
  - (ii) Your calculative plans to forge documents to deceive them,
  - (iii) No money recovered.
10. Six months were deducted for the Guilty plea.
11. Further 11 months were deducted for the following mitigating factors.
  - (i) 29 years old,
  - (ii) Unemployed,
  - (iii) Single,
  - (iv) Admitted that he had hurt the feelings and trust of the complainants,
  - (v) Sought forgiveness,
  - (vi) Admitted the offence to Police,
  - (vii) Apologized to Court.
12. Then 14 days were deducted for the time period in remand. The final sentence was 2 years and 17 days.
13. The main ground of appeal is that the learned Magistrate failed to give proper discount for the guilty plea. There is no specific statutory provision on this aspect. But the practice by courts is to give a 1/3 deduction for an early guilty plea. However, it will depend on the facts and circumstances of each case.
14. The proper procedure to deduct the guilty plea was discussed by Hon. Mr. Justice Paul Madigan in *Gonerogo v State [2013] FJHC 163; HAC 22.2012 (5<sup>th</sup> April 2013)*

*"When casting a sentence, the court should first deal with the aggravating features, then mitigating features arriving at the interim final figure. Only then should the Court as a final act reduce the sentence in recognition of the plea of guilty. To do otherwise distorts the sentence."*
15. In *Vilimone v The State [2008] FJHC 12; HAA 131-132.2007 (8<sup>th</sup> February 2008)* it was held that:

*"[5] The aspect of the sentence determination in the Magistrates Court, that concerned me relates to the fact the appellant's guilty plea was not accounted for separately, but included as part of the mitigating factors. Because the appellant pleaded guilty at the first available opportunity, his sentence should be reduced by a third. Veretariki Vetaukula v The State High Court Crim. App. Case No: HAA 057/07 following Hem Dutt v The State FCA Crim. App. Case no: AAU 0066 of 2005"*

16. In Mahendra Singh v The State [2009] AAU 0036.2008 (1<sup>st</sup> April 2009) the Court of Appeal held:

*"[14] A reduction of sentence by one third is the standard for a plea of guilty. Vilimone v The State [2008] FJHC 12; HAA 131-132.2007 (8<sup>th</sup> February 2008); Veretariki Vetaukula v The State High Court Crim. App. Case No: HAA 057/07 following Hem Dutt v The State FCA Crim. App. Case no: AAU 0066 of 2005; Tuibua v State [2005] FJHC 188 HAA 0677 (15 July 2005). The appellant pleaded guilty. He could have done so earlier; however, this does not detract from the principle that his plea ought to have been taken into account in the sentence."*

17. In Nausa v State [2011] FJHC 23; HAA 022.2010 ( 28<sup>th</sup> January 2011) Hon. Mr. Justice Paul Madigan held:

*"[13] ...The accused pleaded guilty as soon as he possibly could and he willingly co-operated with the police; his record is not attractive but he should not be punished for it. In any event the record shows an attempt to reform.*

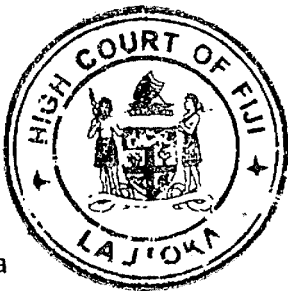
*[14]Early pleas of guilty should be rewarded and until the Fiji Court of Appeal issues specific guidelines it should be a rule of thumb that at least 25% if not 33% discount should be given depending on the timing and sincerity of the plea."*

18. In Leone v State [2011] FJHC 374; HAA 011.2011L (8<sup>th</sup> July 2011) Hon. Mr. Justice Paul Madigan held:

*"[14] It is now recognized in this jurisdiction that pleas of guilty entered at the first opportunity can attract discounts in sentence up to 33% with lesser percentages attaching to later pleas... [15]Pleas of guilty even at a late stage must be given recognition by the Courts by way of encouragement to alleviate the burden and expenses of proceeding to trial. If no recognition by way of discount is given to a contrite and remorseful accused, then there would be no pleas of guilty, thereby bringing pressure on already overloaded fixtures lists."*

19. The learned Magistrate had followed relevant tariff judgment and arrived at a correct starting point. The period added for the aggravating factors is justifiable and reasonable. However, the learned Magistrate had fallen in to error when he deducted 6 months for the Guilty plea. The deduction for the guilty plea should be given after deductions for the mitigating factors. Further, there is no reason given for not giving a 1/3 deduction for the guilty plea.

20. This background warrants this court to exercise its powers in terms of Section 256 (3) of the Criminal Procedure Decree to quash the sentence passed by the Magistrate and pass other sentence which reflects the gravity of the offence within the acceptable range of tariff.
21. Accordingly, I take a starting point of 2 years and add 18 months for the aggravating factors. I deduct 6 months for the mitigating factors. Further 1 year to be deducted for the Guilty plea. When 14 days in remand was deducted the final sentence is 1 year 11 months and 17 days. Considering the nature of the offence acting under Section 18 (3) of the Sentencing and Penalties Decree, I order non-parole period of 12 months.
22. I order sentences in both cases to run concurrently from 14.01.2014.
23. Appeal allowed. Sentence varied.
24. 30 days to appeal to the Court of Appeal.



At Lautoka  
03<sup>rd</sup> June 2014

  
Sudharsana De Silva  
JUDGE

Solicitors : Office of the Legal Aid Commission for the Appellant  
Office of the Director of Public Prosecution for the Respondent