

IN THE HIGH COURT OF FIJI AT SUVA

CASE NO: HAC. 252 of 2018

[CRIMINAL JURISDICTION]

STATE

V

1. SOKOWASA BULAVOU
2. MANUELI NABOU

Counsel : Ms. M. Chowdhury for the State
Mr. K. Prasad for the Accused

Sentenced on : 29 October 2019

SENTENCE

1. Sokowasa Bulavou, you stand convicted of the following offences upon you pleading guilty to same;

COUNT ONE

Statement of Offence

Aggravated Robbery: contrary to section 311 (1) (a) of the Crimes Act of 2009.

Particulars of Offence

SOKOWASA BULAVOU and **MANUELI NABOU** on the 17th day June 2018, at Raiwaqa in the Central Division, in the company of each other robbed Gerald Brown of a jacket valued at \$50.00.

COUNT TWO

Statement of Offence

Aggravated Robbery: contrary to section 311 (1) (a) of the Crimes Act of 2009.

Particulars of Offence

SOKOWASA BULAVOU and **MANUELI NABOU** on the 17th day June 2018, at Raiwaqa in the Central Division, in the company of each other robbed Shernal Mar of a bag containing assorted items all to the total value of \$255.00.

COUNT THREE

Statement of Offence

Resisting Arrest: contrary to section 277 (b) of the Crimes Act of 2009.

Particulars of Offence

SOKOWASA BULAVOU on the 17th day June 2018, at Raiwaqa in the Central Division resisted arrest to Police Constable 5648 Prashnil in the due execution of his duty.

2. You admitted the following summary of facts;

Complainant 1: *Gerald Brown (age 17) (hereafter PW1), Student, 58 Ono Street, Samabula*

Complainant 2: *Sharnel Mars (age 17), Student, Grantham Road, (hereafter PW2).*

Complainant 3: *Police Special Constable 5648 Prashnil, (hereafter PW3).*

Accused: *Sokowasa Bulavou (age 26) (hereafter "the accused")*

Location of offence: *DHL Yard, Grantham Road, Suva.*

1. *On 17th June, 2018 between 10am and 11am, PW1 and his girlfriend PW2 met inside the old Fiji National Provident Fund located at the DHL Yard at Grantham Road, Suva.*
2. *While they were sitting down at the said location and talking, the accused together with his co-accused approached them.*
3. *When they approached PW1 and PW2, the co-accused grabbed PW1's \$50.00 jacket and passed it to the accused.*
4. *At the said time, PW1 was also holding onto PW2's bag containing assorted items to the value of \$255.00. The accused, grabbed PW1 by his collar, pulled the said*

bag from PW1 and passed it to his co-accused, who was in the meantime holding onto PW2.

5. *PW1 managed to free himself from the accused and run to the Grantham Police Post which was nearby to seek help.*
6. *PW1 reported the matter to PW3 in the presence of another police officer.*
7. *PW3 accompanied PW1 out of the police post where he saw both the accused and his co-accused but before he could approach them, they started walking away quickly in different directions.*
8. *PW3 ran after the accused, and attempted to arrest him while he was running away from the crime scene. As PW3 got close to the accused, he threw a punch at PW3 which resulted in him sustaining a bruise under his left eye.*
9. *While PW3 continued running after the accused, another person pushed PW3 from behind, as a result of which he sustained injuries to his knees and finger.*

A copy of PW3's medical report is annexed as A1.

The accused was later arrested and caution interviewed on 18th June, 2018. He was charged with 2 counts of aggravated robbery contrary to section 311 (1) (a) and resisting arrest contrary to section 277 (b) of the Crimes Act 2009.

On 11th September, 2019 the accused voluntarily pleaded guilty in court to the charges against him.

3. The maximum sentence for the offence of aggravated robbery contrary to section 311(1) of the Crimes Act is 20 years imprisonment.
4. According to the summary of facts you have robbed a couple while they were sitting down at a location, namely the DHL Yard at Grantham Road Suva. You are charged with two aggravated robbery counts because you robbed from both of them. Given the facts of this case the offence relevant to the first two counts falls under the category of 'street or less sophisticated' aggravated robbery as identified in the case of *State v Bulavou* [2019] FJHC 877; HAC28.2018 (10 September 2019) and accordingly the applicable sentencing tariff should be an imprisonment term between 05 years and 13 years.

5. The punishment for the offence of resisting arrest under section 277(b) of the Crimes Act (as amended) given the circumstances of your offending is an imprisonment term of 10 years. In this case, according to the admitted facts the police officer you assaulted sustained a bruise under his left eye.
6. The prosecution has submitted that the tariff for this offence is an imprisonment term between 06 to 12 months imprisonment citing the case of *Hicks v State* [2011] FJHC 455; HAA018.2011 (19 August 2011).
7. However, the above tariff was formulated prior to the amendment made to the above section 277 by Act No. 5 of 2018 on 21/03/18 where the penalty was increased to 10 years imprisonment when a police officer is assaulted under the following circumstances;
 - (i) he or she bites, spits on or throws at the police officer, or otherwise applies to the police officer a bodily fluid or human or animal faeces;
 - (ii) he or she is, or pretends to be, armed with a dangerous or offensive weapon or instrument; or
 - (iii) he or she causes bodily harm to the police officer.
8. Given the clear intention of the legislature indicated by the aforementioned amendment to impose a harsher punishment on those who assault police officers during the performance of their duties as police officers, an imprisonment term between 06 to 12 months is clearly an inappropriate and an inadequate punishment for an offender who commits the offence under section 277(b) of the Crimes Act under circumstances that would attract the penalty of 10 years imprisonment. In my view, the sentencing tariff that should be applicable in such cases should be an imprisonment term between 02 years and 07 years.

9. The first two offences you are convicted of are founded on the same facts. Therefore, in view of the provisions of section 17 of the Sentencing and Penalties Act, I consider it appropriate to impose an aggregate sentence of imprisonment against you for the first two counts.
10. Section 17 of the Sentencing and Penalties Act 2009 ("Sentencing and Penalties Act") reads thus;

"If an offender is convicted of more than one offence founded on the same facts, or which form a series of offences of the same or a similar character, the court may impose an aggregate sentence of imprisonment in respect of those offences that does not exceed the total effective period of imprisonment that could be imposed if the court had imposed a separate term of imprisonment for each of them."
11. You are 27 years old. You were employed at a fishing company in Walu Bay. You are said to be in a *de facto* relationship, having a 11-month-old child.
12. I would select 06 years imprisonment as the starting point of your aggregate sentence for the first two counts.
13. The vulnerability of the two victims who were 17 years old will be considered as an aggravating factor to add 01 year to your sentence. Now your sentence is an imprisonment term of 07 years.
14. The only mitigating factor in your favour is that you have entered a guilty plea. This was not an early guilty plea. You pleaded guilty just three weeks before the trial. I have decided to grant you a discount of one-fifth. Accordingly I would deduct 01 year and 05 months. Your final term of imprisonment for the first two counts is 05 years and 07 months.
15. For the third count of resisting arrest, considering the circumstances of the offending, the injury inflicted on the police officer and your guilty plea; I would sentence you to an imprisonment term of 02 years and 05 months.

16. You shall serve the two sentences concurrently. Therefore, your final sentence is an imprisonment term of 05 years and 07 months.
17. You are currently serving a sentence where the remaining head sentence was 07 years; 04 months and 03 days as at 10/09/19. This sentence was imposed in HAC028/2018. The remaining non-parole term fixed in relation to the said sentence as at 10/09/19 was 05 years; 04 months and 03 days.
18. First, I hereby order that you shall serve the sentence imposed in his case concurrently with your uncompleted sentence in HAC028/2018.
19. Secondly, in terms of section 20(1) of the Sentencing and Penalties Act, I hereby order that the new single non-parole period in respect of the sentences you are to serve or complete both in this case and in HAC028/2018 is a period of 05 years; 02 months and 14 days. This period is in fact the remaining non-parole term in HAC028/2018 as at today, since you have now served 01 month and 19 days of the sentence imposed in HAC028/2018 and it was so fixed in order to comply with the provisions of section 20(2)(b) of the Sentencing and Penalties Act.
20. Section 20 of the Sentencing and Penalties Act reads thus;
 - 20 (1) *If a court has sentenced an offender to a term of imprisonment with a non-parole period and the offender is sentenced to a further term of imprisonment before the expiration of the non-parole period, the court must fix a new single non-parole period in respect of all sentences the offender is to serve or complete.*
 - (2) *The single new non-parole period fixed at the time of the subsequent sentence*
 - (a) *supersedes any previous non-parole period that the offender is to serve or complete; and*
 - (b) *must not be such as to render the offender eligible to be released on parole earlier than would have been the case if the subsequent sentence had not been imposed.*
 - (3) *Nothing in this section prevent a court from exercising its power under section 18(2) to decline the fixing of a non-parole period in relation to the subsequent sentence.*

21. In the result,

- a) You are sentenced to an imprisonment term of 05 years and 07 months in this case;
- b) This sentence should be served concurrently with the uncompleted sentence in HAC028/2018;
- c) Accordingly, the remaining head sentence (in view of both HAC028/2018 and HAC252/2018) to be served is;
07 years; 02 months; and 14 days
- d) The new single non-parole term is;
05 years; 02 months; and 14 days

22. Thirty (30) days to appeal to the Court of Appeal.




Vinsent S. Perera
JUDGE

Solicitors;

Office of the Director of Public Prosecutions for the State
Legal Aid Commission for the Accused