

IN THE HIGH COURT OF FIJI
AT LAUTOKA
[CRIMINAL JURISDICTION]

CASE NO: HAC 153 of 2019
and HAC 150 of 2013

BETWEEN : **STATE**

AND : **NACANI TIMO**

Counsel : *Mr. A. Singh for State*
: *Ms. S. Nasedra for the Accused*

Hearing on : *10th of August 2020*
Sentence : *25th of August 2020*

SENTENCE on NON-PAROLE

1. Mr. Nacani Timo, You were convicted by this court on a count of Aggravated Robbery, after a guilty plea and sentenced to 12 years and a month of imprisonment, with a period of non-parole fixed at 11 years and 6 months.
2. You being dissatisfied of the conviction and the sentence, appealed against them and the Supreme Court by its judgment dated 30th August 2018, partially allowed your appeal on the issue of setting a non-parole and dismissed it on the rest of the grounds.

3. Accordingly, there were two issues on which this matter is referred back to the High Court by his lordships to hear the accused on. They were;
 - i) Whether non-parole period should be fixed
 - ii) The length of the said non-parole period.

4. Subsequent to the ruling of the Supreme Court by his Lordships, there has been a legislative amendment and in result present law makes it compulsory to impose a non-parole period. Both learned counsels agree on the said contention and this court need not venture further into the said issue. Therefore, I will proceed to address the second issue referred to by his lordships.

5. In setting a non-parole period, the principals identified by the Supreme Court in the case of **Bogidrau v State** [2016] FJHC 5; CAV0031.2015 (21 April 2016) would provide an appropriate guideline. Accordingly; at [6]
 - (i) “[T]he non-parole term should not be so close to the head sentence as to deny or discourage the possibility of rehabilitation. Nor should the gap between the non-parole term and the head sentence be such as to be ineffective as a deterrent”: per Calanchini P in *Tora v The State* [2015] FJCA 20 at [2].
 - (ii) “[T]he sentencing Court minded to fix a minimum term of imprisonment should not fix it at or less than two thirds of the primary sentence of the Court. It will be wholly ineffective if a minimum sentence finishes prior to the earliest release date if full remission of one third is earned. Experience shows that one third remission is earned in most cases of those sentenced to imprisonment”: *Raogo v State* (CAV 003 of 2010, 19 August 2010)

6. Therefore it can safely be assumed that non-parole sentence should always be;
 - i) Should not be too close to the head sentence and there should be a minimum gap of 6 months in between (as for section 18(4) of the Sentencing and Penalties Act); and
 - ii) Should be more than two thirds of the head sentence. (Though I do not agree with this contention, both parties submit so and this is not the time to venture into this in detail.)

7. The approved head-sentence in the present case is 145 months of imprisonment. Therefore, the appropriate range for the parole period in the present case would be, between 96 months and 20 days and 139 months. This leaves a range of 42 months and 10 days and the exact period would be dependent on the circumstances of this case.
8. It is well established that no factor either mitigatory or aggravatory should be double counted. Practically speaking, there cannot be any factor which was not submitted before in deciding the appropriate sentence to be considered at this stage, if learned counsels have acted before, with due diligence. I do not consider that it is appropriate for this to be a stage where the counsels would be able to adduce fresh mitigating or aggravating factors, which they could not submit before by an oversight.
9. As this is for non-parole hearing, I have heard the counsel, giving them sufficient time and opportunity. When considered the submissions of the learned counsel, I do not find any fresh factors, which were not considered before to be considered in fixing the non-parole. In absence of fresh matters to consider either in reducing or enhancing, it would only be fair to select the middle of the range, without tilting the scales either way. Therefore, from the range of 42 months and 10 days, I find it reasonable to select 21 months and 05 days and add it to the minimum term of 96 months and 20 days, making it 117 months and 25 days.
10. Therefore, you are sentenced to 12 years and one month of imprisonment with non-parole set at 9 years 09 months and 25 days. Your sentence would be operative with effect from the 30th of June 2014.
11. You have 30 days to appeal to the Court of Appeal if you so desire.



Chamath S. Morais

Chamath S. Morais
JUDGE

Solicitors for the State : Office of the Director of Public Prosecutions, Lautoka.

Solicitors for the Accused : Legal Aid Commission, Lautoka.