

**IN THE FIRST CLASS MAGISTRATES COURT**  
**AT SUVA**  
**CRIMINAL JURISDICTION**

Juvenile Case No. 23/2016

**The State**

**V**

**I. B.**

**For the State** : State Counsel E. Samisoni

**For the Juvenile** : Counsel Ms. Daunivesi

**Date of Punishment** : 21<sup>st</sup> April 2017

**PUNISHMENT**

**Introduction**

1. The Juvenile has been charged with one count of **Aggravated Robbery** contrary to Section 311(1)(a) of the Crimes Decree Number 44 of 2009.
2. This is an indictable offence and the case was transferred to the High Court on 22/07/2016. Subsequently, the High Court granted extended jurisdiction to the Juvenile Court on 8/08/2016, in terms on Section 4(2) of the Criminal Procedure Decree 2009.

3. You have pleaded guilty to the charge on your own free will, on 01/03/2017, with a representation by a Counsel from Legal Aid. Being satisfied with your unequivocal plea of guilt, I found you guilty to the offence of Aggravated Robbery, as set out in the charge.
4. The prosecution has filed the Summary of Facts on the same day, which has been duly admitted by you. It revealed that on 9<sup>th</sup> July 2016, at about 10pm, you, together with 4 other boys, have got into a Taxi with the registration number LT 5526, driven by one Jasmindar Singh (the complainant) to go to Tikaram Place in Namadi Heights. When the Taxi stopped at the roundabout at Tikaram Place, the complainant has switched on the doom light to see the meter, you, sitting in the front seat, have switched off the light and punched the complainant. The boys sat at the back have grabbed the neck of the complainant and taken some loose coins valued at \$20 from him. You have taken the taxi meter valued at \$260. Thereafter all of you have run away towards a bush at the roundabout.
5. You were arrested by the police and interviewed under caution in the presence of your uncle whereby you have admitted committing the offence.

### Tariff

6. The maximum penalty for Aggravated Robbery is 20 years imprisonment. The tariff for this offence has been discussed by Justice Madigan in the case of *Rarawa v The State Criminal Appeal No HAA 5 of 2015. (30 April 2015)* as *10-16 years imprisonment*; In *Wallace Wise V The State [2015] FJSC7; CAV0004.2015 (24 April 2015)* Supreme Court decided that the tariff for an offence of Aggravated Robbery should be *8-16 years imprisonment*.
7. In addition to the aforementioned tariff, in terms of section 30(3) of the Juvenile Act, this court has a limitation in deciding an appropriate punishment for Juveniles, which

says, a young person shall not be ordered to be imprisoned for more than 2 years **for any offence.**

### **Aggravating Factors**

8. In *State V Rokonabete [2008] FJHC 226* Justice Goundar states that; *“The dominant factor in assessing seriousness for any types of robbery is the degree of force used or threatened. The degree of injury to the victim or the nature of and duration of threats are also relevant in assessing the seriousness of an offence of robbery with violence. If a weapon is involved in the use or threat of force that will always be an important aggravating feature. Group offending will aggravate an offence because the level of intimidation and fear caused to the victim will be greater. It may also indicate planning and gang activity. Being the ringleader in a group is an aggravating factor. If the victims are vulnerable, such as elderly people and persons providing public transport, then that will be an aggravating factor. Other aggravating factors may include the value of items taken and the fact that an offence was committed whilst the offender was on bail.”*
9. You, together with 4 others, have robbed a vulnerable person who is providing public transport as a taxi driver.
10. You have first punched the driver on his face twice, and then the others have grabbed him by the neck. According to the Medical Examination Report, the complainant has suffered from a superficial laceration of the lower lip. It is clear that he sustained injuries due to your punch.
11. Though you have claimed in your mitigation submission that this is not a planned act, but you have taken the advantage the opportunity, the court cannot agree with that submission. It is obvious that you have determined the act with others, before getting into the taxi, as you all have acted in unison, at the time of the incident.

## Mitigating Factors

12. You are a first offender.
13. You were 16 years old at the time of the offence and a student. According to your mitigation submission, you want to become a teacher.
14. You have co-operated with the police in investigations.
15. You are remorseful, and have promised not to re-offend.
16. Value of items which were robbed was comparatively less.

## **Early Guilty Plea**

17. You have tendered an early guilty plea.
18. In *Vilimone v State* [2008] FJHC 12; HAA 131-132.2007 (8 February 2008) Justice Mataitoga has commented that a discount from the sentence for a guilty plea should be considered separately from other mitigating factors.
19. In *Rokini v State* [2013] FJHC 680; HAA16-19.2013 (12 December 2013), Justice Gounder quoted from the Court of Appeal Judgment *Daunabuna v. The State* (2009) FJCA 23; AAU0120.2007 (4 December 2009) "the Court of Appeal highlighted the considerations that went to the weight of a guilty plea at [16]..." "The weight to be given to a guilty plea depends on a number of factors. Some of these factors were identified by Hunt CJ at CL in *R v. Winchester* (1992) 58 A Crim R 345 at 350:" According to these decisions, contrition or some other quality of attribute shown in guilty plea, should be considered independently from the mere fact that the person has pleaded guilty.

20. You have pleaded guilty at the earliest available opportunity saving time of the court and the expenses of a full trial. According to your submissions, you are remorseful and seek forgiveness of court. Such facts show that you have pleaded guilty because you are remorseful of your act. Therefore, your early guilty plea should attract a considerable concession on your punishment.

### **Analysis**

21. Purposes of imposing sentence by court are mentioned in section 4 of the Sentencing and Penalties Decree 2009. They are;

- (a) To punish offenders to an extent and in a manner which is just in all circumstances;
- (b) To protect the community from offenders;
- (c) To deter offenders or other persons from committing offences of the same or similar nature;
- (d) To establish conditions so that rehabilitation of offenders may be promoted and facilitated;
- (e) To signify that the court and the community denounce the commission of such offences; or
- (f) Any combination of these purposes.

22. Robbed a taxi driver by a group of passengers using violence is a serious offence which is undoubtedly denounced by the society. Taxi drivers should be free from fear to do their job and such very purpose will be undermined if they had to fear of their passengers as potential offenders. These types of offenders must deter from committing further offences in this nature and the community should be protected from this kind of offenders.

## Punishment

23. Considering the nature of the offence, the aggravated factors, mitigating factors, early guilty plea and the statutory limitation in terms of section 30(3) of the Sentencing and Penalties Decree 2009, I impose you a one (1) year imprisonment term as the punishment for the offence of Aggravated Robbery.
24. I will now consider whether I should suspend your punishment.
25. It is submitted in mitigation that you are a student and in a position to rehabilitate yourself. You don't have a propensity to offend and will not be a threat to the society.
26. Your Social Background Report says that you have behaved well in the detention at the Juvenile Center, you were very cooperative and adhered to all instructions given, from the date of the admission.
27. Even though, it is undisputed that the offenders of this calibre should deter from further offending, in view of you being a young, first offender, I believe that you should be given an opportunity to rehabilitate.
28. In the above context, an imprisonment term, as the sentence, would not serve the purpose of rehabilitating you as a first, young offender. This view is supported by Justice Shameem in **Nariva v The State** [2006] FJHC 6; HAA0148J.2005S (9 February 2006); as follows;
- "The courts must always make every effort to keep young first offenders out of prison. Prisons do not always rehabilitate the young offender. Non-custodial measures should be carefully explored first to assess whether the offender would acquire accountability and a sense of responsibility from such measures in preference to imprisonment."*
29. On a careful consideration of the law and facts aforementioned, I am in the opinion of that a custodial sentence is not warranted in this case. As I have concluded your final

punishment as one (1) year imprisonment term, your punishment is eligible to be suspended, in terms of section 26(2)(b) of the Sentencing and Penalties Decree 2009. Therefore I suspend your punishment for a period of 2 years.

30. The nature of your sentence is explained to you in Court. If you re-offend during the suspension of your punishment, this punishment may be activated under section 28 of the Sentencing and Penalties Decree 2009.

31. 28 days to Appeal.

Summary of the punishment- **One (1) year imprisonment term, suspended for 2 years**

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Geethani Wijesinghe  
Resident Magistrate

At Suva

21<sup>st</sup> April 2017