

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

CRIMINAL APPEAL NO. AAU 116 OF 2017
(High Court HAC 160 of 2015)
(Magistrates Court No. 738 of 2015 at Suva)

BETWEEN : **JOJI TALEMAITOGA**
Appellant

AND : **THE STATE**
Respondent

Coram : Calanchini P

Counsel : Mr M Fesaitu for the Appellant
Ms S Tivao for the Respondent

Date of Hearing : 17 October 2019

Date of Ruling : 27 November 2019

RULING

[1] The appellant was convicted, along with two others, on his plea of guilty by the Magistrates Court at Suva exercising extended jurisdiction on one count of aggravated

robbery. On 21 July 2016 the appellant, and his two co-accused, were each sentenced to 8 years imprisonment with a non-parole term of 5 years.

- [2] This is the appellant's application for an enlargement of time for leave to appeal against sentence. The application is made pursuant to section 26(1) of the Court of Appeal Act 1949 (the Act). Section 35(1) of this Act gives to a single Judge of the Court power to enlarge time.
- [3] The factors to be considered for an enlargement of time are (a) the length of the delay, (b) the reason for the failure to file within time, (c) whether there is a ground of merit justifying the appellate court's consideration and where there has been substantial delay, nonetheless is there a ground of appeal that will probably succeed and (d) if time is enlarged, will the respondent be unfairly prejudiced: **Kumar and Sinu –v- The State** [2013] FJSC 17; CAV 1 of 2009, 21 August 2012.
- [4] The delay in filing the application for leave to appeal against sentence is about 11 months. The reason for the failure to file within time is explained in the appellant's supporting affidavit. Briefly the appellant deposes that he had no knowledge of the appeal process after he was sentenced until some time much later when he was informed by another prisoner that he could appeal. However I find that reason unconvincing and that there is no compelling reason to explain what can only be regarded as a substantial delay. The issue then is whether there is a ground of appeal that is likely to succeed.
- [5] The one ground of appeal against sentence on which the appellant relies is:

“That the learned Sentencing Magistrate did not provide sufficient discount to the guilty plea.”

- [6] The offence occurred on 24 – 25 February 2015. The appellant was arrested and interviewed under caution on 8 April 2015. During the interview the appellant admitted that he had been one of the three who had threatened and robbed the complainant on 24 – 25 February 2015. He admitted stealing cash himself and receiving further cash as his


share of the proceeds of the robbery. The Magistrate noted that the appellant had entered an early guilty plea and was of good character. He deducted two years for those two mitigating factors.

- [7] It is clear that the appellant had made admissions at the earliest possible opportunity, i.e in his caution interview and that he subsequently pleaded guilty. Perhaps on some occasions a deduction of only two years from a sentence of 10 years may indicate that the discretion has miscarried.
- [8] However this was a very serious case of aggravated robbery. It was a night time home invasion while the occupants were sleeping. They were awakened and entry gained by a trick. Violence was used and property stolen. The facts are similar to those that were before the Supreme Court in the case of **Wallace Wise –v- The State** [2015] FJSC 7; CAV 4 of 2015. In my judgment it was quite proper for the learned Magistrate to consider and apply the guidelines when the facts of the offence are similar to those in the **Wallace Wise** decision (supra). It must also be noted that the offending in the two cases occurred at about the same time.
- [9] The head sentence in the present case is at the lowest end of the tariff for offences of this nature and as a result I have concluded that the ground of appeal is unlikely to succeed and the application for an enlargement of time is refused.

Order:

Application for enlargement of time to appeal against sentence is refused.




Hon Mr Justice W D Calanchini
PRESIDENT, COURT OF APPEAL