

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

CASE NO: HAC. 104 of 2018

BETWEEN :

STATE

AND :

JONE DELAI

Counsel :

Ms. S. Tivao for State
Ms. L. M. Ratidara for Accused

Hearing on :

28th August 2018

Sentence on :

20th September 2018

SENTENCE

1. Jone Delai, you stand convicted of the offence of Robbery contrary to section 310 (1)(a) of the Crimes Act 2009 upon your plea of guilty. Your charge reads thus;

Statement of Offence

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

Particulars of Offence

Jone Delai on the 3rd day of March 2018, at Nasinu in the Central Division robbed Mohammed Nafiz of a 1 x Samsung Galaxy J2 mobile phone valued at \$375.00 the property of Mohammed Nafiz.

2. You have admitted the following facts;
Complainant – Mohammad Nafiz, aged 20, Student (hereafter PW1) Dogo Street, Kinoya.

Accused – Jone Delai – aged 20, unemployed, of Lot 43 Tovata road.

On 3rd March, 2018 at around 7.15 pm, Mr. Nafiz was walking home whilst talking to his dad on his mobile phone.

As he was about to enter Dogo Junction the accused used force and punched Mr. Nafiz from behind, grabbed his mobile phone and ran away.

The accused took the mobile phone of Mr. Nafiz with the intention to permanently deprive Mr. Nafiz of the same.

Mr. Nafiz's mobile phone was a Samsung Galaxy J2 worth \$315.00.

The accused was caution interviewed where the accused stated he was drunk.

3. The accused was charged with 1 count of Robbery contrary to section 310(1)(a) of the Crimes Act 2009.
4. The maximum sentence for the offence of Robbery contrary to section 310(1) of the Crimes Act is 15 years imprisonment.
5. The tariff depends on the nature of robbery. In your case, you committed a street robbery or mugging.

The guidelines set out by the Court of Appeal in **Raqauqau v State** [2008] FJCA 34; AAU0100.2007 (4 August 2008) apply to your case. The Court said;

- i) The sentencing bracket was 18 months or 5 years, but the upper limit of 5 years might not be appropriate 'if the offences are committed by an offender who has a number of previous convictions and if there is a substantial degree of violence, or if there is a particularly large number of offences committed'.
 - ii) An offence would be more serious if the victim was vulnerable because of age (whether elderly or young), or if it had been carried out by a group of offenders.
 - iii) The fact that offences of this nature were prevalent was also to be treated as an aggravating feature.
6. Explaining the aggravating circumstances of the offence of robbery with violence under the now repealed Penal Code, Goundar J said in the case of **State v Rokonabete** [2008] FJHC 226 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

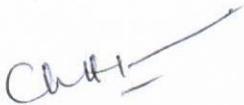
also relevant in assessing the seriousness of an offence of robbery with violence.”

7. The force used to steal was minimal. No weapon was used. Your criminality falls towards the lower end of the tariff.
8. Therefore, I will commence your sentence from 24 months of imprisonment.
9. The aggravating factor is that this is street mugging. Street mugging is too prevalent in our community. Most of the street muggings are committed by unemployed youths. The courts have a duty to protect the public from anti-social behaviour that threatens safety and security of people walking on streets.
10. In your mitigation your counsel had submitted that you are 20 years old and a first offender. It is said that you are remorseful, which is substantiated by your early plea.
11. Due to aggravating factors I will enhance your sentence by 6 months and due to mitigating factors set out above I will reduce it by 4 months.
12. You pleaded guilty to the charge on the first day your plea was taken. By pleading guilty at the earliest opportunity, you have saved this court's time. In view of your early guilty plea I would grant you a discount of 8 months.
13. Your final sentence stands at 18 months imprisonment.
14. Section 24 of the Sentencing and the Penalties Act reads thus;

“If an offender is sentenced to a term of imprisonment, any period of time during which the offender was held in custody prior to the trial of the matter or matters shall, unless a court otherwise orders, be regarded by the court as a period of imprisonment already served by the offender.”

15. The period you have been in custody is considered and discounted in another matter, for which you serve an imprisonment already. Therefore, you will not be entitled to any benefit of such.
16. Now I will consider the provisions of section 26(1) of the Sentencing and Penalties Act.

26. — (1) On sentencing an offender to a term of imprisonment a court may make an order suspending, for a period specified by the court, the whole or part of the sentence, if it is satisfied that it is appropriate to do so in the circumstances.
17. It is apparent you are already serving a jail term in a connected matter. Therefore, I do not consider it appropriate to suspend your sentence. Your sentence will operate subject to the provisions in section 22 of the Sentencing and Penalties Act of 2009.
18. Thirty (30) days to appeal to the Court of Appeal.


Chamath S. Morais
JUDGE



Solicitors;

***Office of the Director of Public Prosecutions, Suva, for the State.
Legal Aid Commission, Suva, for the Accused.***