

**IN THE COURT OF APPEAL, FIJI**  
**ON APPEAL FROM THE MAGISTRATES' COURT**  
**ACTING WITH EXTENDED JURISDICTION**

**Criminal Appeal No: AAU0032 of 2011**  
**(on appeal from HAC32/2010)**

**BEFORE THE JUSTICE OF APPEAL, HON. JUSTICE PAUL K. MADIGAN**

**BETWEEN** : **JOSHUA BENJAMIN ROGERS**  
***Applicant***

**AND** : **THE STATE**  
***Respondent***

**Counsel** : Mr. J. Savou (L.A.C.) for Applicant  
Ms M. Fong for the State

**Dates of Hearing** : 22 March 2013  
**Date of Judgment** : 28 March 2013

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**JUDGMENT**

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1. This applicant applies for leave to appeal a sentence of eight years for robbery with violence, an offence he had pleaded guilty to on the 14<sup>th</sup> September 2010 in the Magistrates' Court at Suva. The learned Magistrate was acting with extended jurisdiction pursuant to an order of the High Court under section 4(2) of the Criminal Procedure Decree 2009. The Magistrate in passing sentence on the 29<sup>th</sup> December 2010 had made four years of the sentence concurrent to a term the applicant was already serving and four years consecutive to that sentence.

2. The applicant's grounds of appeal are that –
  - (i) The sentence breached the totality principle.
  - (ii) The sentence was harsh and excessive.
  - (iii) The Magistrate gave too much emphasis to aggravating features with not enough credit for his plea of guilty.
3. The brief facts of the case were that on 19 November 2009 at about 10.45am the applicant along with others entered Nacara Food Market by forcing open the grill door. They were armed with an iron rod. They taped the mouths and hands of the two complainants and pulled the hair of one of them. They demanded gold and cash. They stole cash, liquor, cigarettes, gold items and recharge cards all to the value of approximately F\$11,000.
4. This was a particularly nasty and violent robbery and the sentence of eight years was at the lower end of the tariff band, and not a day too long. Time had been allowed for the plea of guilty, but not a full third which was quite proper, given the late plea of guilty.
5. The applicant's grounds of excessive sentence and no credit for guilty plea are without merit and leave is not given to bring those grounds before the full Court.
6. There may perhaps be merit in the applicant's ground of appeal relating to totality of sentence. By making four years concurrent with and four years consecutive to a term the applicant was already serving, was in contravention of the terms of section 22 of the Sentencing and Penalties Decree and the Court of Appeal has recently discussed this matter in ***Asaeli Vukitoga*** [2013] FJCA 19 AAU0049.2008 (13 March 2013). The full Court's decision in that matter could well be argued in favour of the

applicant having his total sentence made concurrent to the term he was already serving, although the sentencing Magistrate did purport to explain why she was making the sentence partly consecutive.

7. Given that the applicant has an arguable point on this ground, leave is granted to him to bring that ground only before the Full Court. The grounds that the sentence was harsh and excessive and that it was wrongly arrived at are not arguable and leave is refused to argue those grounds.

### **Conclusion**

8. Pursuant to section 35(1)(e) of the Court of Appeal Act, I hereby give leave to the applicant to appeal his sentence solely on the ground that it should have been made wholly concurrent to the sentence he was already serving.

Paul K. Madigan  
**Judge of Appeal**

At Suva  
28 March 2013