

**IN THE COURT OF APPEAL**  
**[On Appeal from the High Court]**

**Criminal Appeal No. AAU118 OF 2013**  
**[HC Case No. HAC081 of 2011]**

**BETWEEN** : JOSHUA BENJAMIN ROGERS  
*Appellant*

**AND** : THE STATE  
*Respondent*

**Coram** : Hon. Mr. Justice Goundar

**Counsel** : Appellant in person  
Mr. L. Fotofili for Respondent

**Date of Hearing** : 13 June 2014

**Date of Ruling** : 25 July 2014

**RULING**

- [1] The appellant was sentenced to a total term of 8 years imprisonment after he pleaded guilty to two counts of robbery with violence in the Magistrates' Court exercising extended jurisdiction of the High Court. The learned Magistrate further ordered that the appellant serve 4 years concurrently and 4 years consecutively with his pre-existing sentence. The sentence was imposed on 29 October 2010.
- [2] The appellant filed this appeal on 5 December 2013. The appeal is against conviction and sentence. The appeal is out of time by 2 years and 7 months. The appellant has not provided any compelling reasons for this very late appeal. For the appellant to succeed with his application for an extension of time to appeal he must demonstrate that there is some merits in his grounds of appeal.

[3] The first ground states:

“That the learned Magistrate erred in law by applying the Sentencing and Penalties Decree when he was convicted under the Penal Code (now repealed).”

This ground is misconceived. The Sentencing and Penalties Decree, although came into effect in February 2010, applied to the conviction of offences under the Penal Code. This ground is not arguable.

[4] The second ground states:

“That the learned Magistrate erred in law by failing to put the election to the accused whether the matter should be heard in the High Court or Magistrates’ Court.”

[5] This ground is not arguable because the appellant was convicted in the Magistrates’ Court exercising the extended jurisdiction of the High Court. When the High Court extends the jurisdiction of the Magistrates’ Court to hear a matter, the accused’s election of the venue is virtually overruled.

[6] The third ground states:

“That the appellant was prejudiced through lack of representation.”

[7] This ground has no substance. The appellant was represented by legal aid counsel when he pleaded guilty to the charges in the Magistrates’ Court. The charges were read and explained to him. He told the learned Magistrate that he understood the charges and he was pleading guilty. There is nothing in the court record to suggest that the appellant’s guilty pleas are equivocal. This ground is not arguable.

[8] The fourth ground states:

“That the learned Magistrate was wrong in law and in fact by what she said on page 5, para 19, line 1-2 of her sentencing record on the 29 of December 2012, she said when considering the above mentioned statement it is clear that your only intention was to get all pending files disposed in view of a concurrent sentence to the present serving term when it is a miscarriage of justice.”

[9] The learned Magistrate was entitled to determine whether the appellant was pleading guilty because he was genuinely remorseful or was he pleading guilty for some other reason. The appellant did not enter an early guilty plea. When he pleaded guilty in the Magistrates' Court, he was already a serving prisoner.


[10] In these circumstances, the trial Magistrate was justified in saying that the appellant was not pleading guilty because he was genuinely remorseful, but he was pleading guilty in the hope of getting a concurrent sentence for numerous violent offences. This ground is not arguable.

### Result

[11] The delay of 2 years and 7 months is unjustified and the appeal itself lacks merit.

[12] The application for an extension of time and for leave is refused.



  
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Hon. Justice D. Goundar  
**JUDGE OF APPEAL**

At Suva  
25 July 2014

### Solicitors:

Appellant in person  
Office of the Director of Public Prosecutions for State