

IN THE COURT OF APPEAL, FIJI
On appeal from the High Court of Fiji

CRIMINAL APPEAL AAU 19 of 2013
(High Court HAC 114 of 2011)

BETWEEN : PONIPATE BAINIVALU
Appellant

AND : THE STATE
Respondent

Coram : Calanchini P
Waidyaratne JA
Prematilaka JA

Counsel : Ms S. Waqainabete for the Appellant.
Ms P. Madanavosa for the Respondent.

Date of Hearing : 16 September 2016

Date of Ruling : 30 September 2016

RULING

[1] The Appellant had pleaded guilty to one count of aggravated robbery contrary to section 311(1) (b) of the Crimes Decree 2009 and to one count of theft contrary to section 291 of the Crimes Decree 2009. He was subsequently convicted and on 3

May 2012 was sentenced to a total term of 8 years imprisonment to be served concurrently with an existing sentence with a non-parole term of 7 years.

- [2] The Appellant subsequently filed an application for leave to appeal against sentence out of time. Later he filed an application for leave to abandon his appeal under Rule 39 of the Court of Appeal Rules. In accordance with the decision of the Supreme Court in Masirewa -v- The State (CAV 14 of 2008; 17 August 2010) the application was listed for hearing before the Court of Appeal.
- [3] At the hearing the Appellant confirmed that he had made his application voluntarily. His application was made on the basis of legal advice to the effect that his sentence was appropriate. He confirmed that he had received legal advice as to the consequences in the event that his application was granted.
- [4] Under the circumstances the application to abandon the appeal against sentence is granted and the appeal is dismissed.

Order:

Appeal against sentence is dismissed.



W. Calanchini

HON MR JUSTICE W. D. CALANCHINI
President, Court of Appeal

C. Waidyaratne

HON MR JUSTICE C. WAIDYARATNE
Justice of Appeal

C. Prematilaka

HON MR JUSTICE C. PREMATILAKA
Justice of Appeal