

IN THE COURT OF APPEAL, FIJI
ON APPEAL FROM THE HIGH COURT OF FIJI

CRIMINAL APPEAL AAU 154 OF 2015
(High Court extended jurisdiction to MC 1324-12 at Nasinu)

BETWEEN : ROVARAMUA KOMAISAVAI
EPI TUKAI

Appellants

AND : THE STATE

Respondent

Coram : CalanchiniP

Counsel : Ms P Prakash for the First Appellant
Ms M Vosawale for the Respondent

Date of Hearing : 10 April 2017

Date of Ruling : 28 April 2017

RULING

- [1] This is an application by the Second Appellant for leave to appeal against sentence. The Appellants were convicted on their pleas of guilty of the offence of aggravated robbery by the Magistrates Court at Nasinu exercising the extended jurisdiction of the High Court. On 16 September 2015 both Appellants were sentenced to terms of imprisonment of 5 years 6 months.

- [2] The Appellants filed a joint notice of application for leave to appeal against conviction and sentence dated 16 October 2015. Although the notice was not filed until 16 November 2015 the appeal should be regarded as timely as incarcerated unrepresented appellants have no control over the movement of an appeal notice after it has been hand-written, signed and dated by the appellants.
- [3] The first Appellant has subsequently filed an application to abandon his appeals against conviction and sentence pursuant to Rule 39 of the Court of Appeal Rules. His application will be listed for hearing before the Full Court on a date to be fixed. The second Appellant has applied to abandon his appeal against conviction.
- [4] The second Appellant's challenge to his sentence is that he was a juvenile at the time of his having committed the offence. It is apparent from the sentencing decision that he was sentenced on the basis that he was 19 years old. It would appear that the reference to 19 years old was intended to be a reference to the age of the second Appellant at the date of sentencing. His birth certificate states that he was born on 1 August 1995. However the offence was committed on 27 October 2012. As a result the second Appellant was 17 years 3 months old at the time of offending.
- [5] In section 2 of the Juveniles Act 1973 a juvenile is defined as a person who has not attained the age of 18 years and includes a child and a young person. A child is a person who has not reached 14 years and a young person is a person who has turned 14 but has not reached 18 years. Under these definitions the second appellant was a young person and consequently juvenile at the time the offence was committed. Under section 30(1) of the Juveniles Act no child can be ordered to be imprisoned for any offence and a young person shall not be ordered to be imprisoned for more than 2 years for any offence. It stands to reason then, that the second Appellant could not have been sentenced to a term of imprisonment of more than 2 years. The sentence passed of 5 years and 6 months represents an arguable error in the exercise of the sentencing discretion since the appellant is entitled to be sentenced to the less severe sentence that applied to him as a

juvenile at the time the offence was committed. Leave to appeal against sentence is granted.

Order:

1. *The application of the first Appellant to abandon his appeal against conviction and sentence is to be listed for hearing before the Court of Appeal on 23 June 2017 at 9.30am.*
2. *The second appellant's application for leave to appeal sentence is granted.*
3. *The second appellant's application to abandon his appeal against conviction is to be heard with his appeal against sentence.*
4. *The second appellant's appeal against sentence is to be listed for hearing before the Court of Appeal on 23 June 2017 at 9.30am.*
5. *The appeal record for the second Appellant's appeal against sentence is to be filed for certification by Friday 26 May 2017.*



W. Calanchini

Hon Mr Justice Calanchini
President, Court of Appeal