

IN THE COURT OF APPEAL, FIJI
ON APPEAL FROM THE JUVENILE COURT AT LAUTOKA
Exercising extended jurisdiction

CRIMINAL APPEAL NO. AAU 19 OF 2018
(Juvenile Case No: 1 of 2011)

BETWEEN : **JOSATEKI RALULU**
Appellant

AND : **THE STATE**
Respondent

Coram : **Calanchini P**

Counsel : **Ms S Nasedra for the Appellant**
Ms W Elo for the Respondent

Date of Hearing : **14 August 2019**

Date of Ruling : **23 August 2019**

RULING

[1] The appellant was charged with one count of rape to which he pleaded not guilty. Following a trial in the Juvenile Court at Lautoka exercising extended jurisdiction the

appellant was convicted on one count of sexual assault. On 4 January 2018 he was sentenced to 5 years imprisonment with a non-parole term of 2 years.

- [2] There are two applications before the Court. The first is a timely (conceded by the State) application for leave to appeal against sentence pursuant to section 21(1)(c) of the Court of Appeal Act 1949 (the Act). Section 35(1) of the Act gives to a single judge power to grant leave. The test for granting leave to appeal against sentence is whether there is an arguable error in the exercise of the sentencing discretion: **Naisua –v- The State** [2013] FJSC 14; CAV 10 of 2013, 30 November 2013.
- [3] The second application is for bail pending appeal pursuant to section 33(2) of the Act. Section 35(1) of the Act gives to a single judge of the Court power to admit an appellant to bail. In addition to the matters to which section 17(3) of the Bail Act 2002 refers, the appellant is required to establish exceptional circumstances in order to be admitted to bail pending appeal: **Zhong –v- The State** [2014] FJCA 108; AAU 44 of 2013, 15 July 2014 and **Seniloli and Others –v- The State** AAU 41 of 2004, 23 August 2004.
- [4] The sole ground of appeal is concerned with the imposition of a five years term of imprisonment when the appellant was still only 15 years old at the time of offending. It would appeal that the appellant was sentenced on 4 January 2018 on the basis that he was at the time of sentencing an adult over the age of 18 years. The appellant was born on 4 April 1996. At the time of sentencing he was about 21 years 9 months old. However at the time of the offending on 12 July 2011, the appellant was 15 years 3 months old.
- [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 young person is a person who has turned 14 but has not yet reached 18 years. As a result the appellant was a young person at the time the offence was committed. Under section 30(2) of the Juveniles Act a young person shall not be ordered to be imprisoned for more than 2 years for any offence. Therefore the appellant should not have been sentenced to a term of imprisonment of more than 2 years. The sentence of 5 years imprisonment represents a

ground of appeal that is likely to succeed as an arguable error in the exercise of the sentencing discretion. 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 is granted.

[6] The application for bail pending appeal is not opposed by the State. In view of the matters that have been considered in this Ruling I am satisfied that exceptional circumstances exist in this case as the appeal against sentence has a very high likelihood of succeeding.

[7] As the appellant has been incarcerated since 4 January 2018 the other requirements specified in section 17(3) of the Bail Act do not prevent bail pending appeal being granted to the appellant.

Orders:

- 1). *Leave to appeal against sentence is granted.*
- 2). *The appellant is admitted to bail on the following conditions:*
 - a. *The appellant is to reside at Vanuakula Settlement, Tropik Road, Drasa Lautoka.*
 - b. *The appellant is to notify the Court of Appeal Registry of any change of address.*
 - c. *The appellant is to report to the Lautoka Police Station every Saturday between 6.00am and 6.00pm.*
 - d. *The appellant is required to attend Court whenever called upon by notice to do so.*
 - e. *The appellant is to provide a surety in the person of Saverina Mafoi (his mother) telephone number 9051829.*

- f. The appellant is required to attend the Court of Appeal on 9 October 2019 at 11.30am for the call-over of his appeal.*
- 3). *The appeal record is to be lodged for certification no later than 30 September 2019.*
- 4). *Both parties are to file and serve written submissions by 21 October 2019.*
- 5). *The appeal is listed for call-over on 9 October 2019 for fixture in the November session of the Court.*



W. Calanchini

Hon Mr Justice W D Calanchini
PRESIDENT, COURT OF APPEAL