

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

**CRIMINAL APPEAL NO. AAU 050 OF 2024**  
**[Suva High Court: HAC 324 of 2022]**

**BETWEEN** : **PITA SALAUNEUNE**

**First Appellant**

**ALIVERETI COKANASIGA**

**Second Appellant**

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

**Respondent**

**Coram** : Qetaki, RJA

**Counsel** : Ms. S. Prakash for the Appellant  
Mr. E. Samisoni for the Respondent

**Date of Hearing** : 5 August, 2025

**Date of Ruling** : 26 August, 2025

## **RULING**

### **(A). Background**

[1] The Appellants are appealing their sentence delivered on 9 July 2024 at the High Court in Suva. They were jointly charged for Count 1, Aggravated Burglary contrary to section 313 (1) (a) of the Crimes Act 2009, and Count 2, Theft contrary to section 291 (1) of the Crimes Act 2009.

[2] Both the Appellants were represented by counsels from the Legal Aid Commission, and on 21 August 2023 they pleaded guilty to the charges voluntarily and

unequivocally. The Appellants were formally convicted by the learned trial Judge (per P. K. Bulamainaivalu Puisne Judge) on 22 August 2023.

- [3] On 9 July 2024, the Appellants were both sentenced to 3 years imprisonment with a non-parole period of 2 years or 24 months.

**(B). Facts in brief**

- [4] On Tuesday 30 August 2022 at about 10:30am Maureen Eastgate and her husband Albert Henry Eastgate a.k.a Tiko Eastgate left their home at Vunikoka Farm, Naitasiri and travelled to Suva. They returned to their home at about 3:30pm. Upon reaching their home, they entered via the back door and Maureen noticed that their guitar was on the floor which made her suspect that something was wrong since the same guitar was in their bedroom upstairs.

- [5] Maureen proceeded upstairs and noticed that their bedroom door was open which was locked before they went to Suva. In their bedroom she noticed that things were scattered and the cupboards opened, recalling that they had earlier packed in preparation for their upcoming trip to New Zealand. The various items that were stolen had a total value of \$16,050.00

- [6] On 6 September 2022, the Appellants were arrested by the police, and subsequently interviewed under caution and charged. On the date of offending the 1<sup>st</sup> Appellant was 21 years old, and the 2<sup>nd</sup> Appellant 18 years 10 months old.

**(C). Ground of Appeal**

- [7] The Appellants urge a Single Ground against sentence as follows:

*That the learned sentencing judge erred in law and in fact by failing to consider the time spent in remand from date of guilty plea to date of sentence (10 months and 17 days) as time served.*

**(D). High Court Sentencing (per Bulamainivalu)**

**Count 1-Aggravated burglary**

- [8] The maximum sentence for Aggravated Burglary is 17 years imprisonment. Based on this Court's sentencing guideline for the offence of Aggravated Burglary in **Kumar v State** [2022] FJCA 164; AAU117.2019 (24 November 2022) and summary of facts, the category of harm in this instance is medium. Thus, the corresponding sentencing range of 3 to 8 years imprisonment, and starting point of 5 years. (Paragraph 10 of sentencing).
- [9] 2 years is added for the aggravating circumstances of the offending. (Paragraph 11 of sentencing)
- [10] 1 year deducted for mitigating factors. Balance is now 6 years. (Paragraph 12)
- [11] Special deductions: 2 years (being one third deduction for the early guilty plea) for both Appellants: **Ourai v State** [2015] FJSC 15; CAV24.2014 (20 August 2015) per Justice Marsoof at paragraph 54, and **Aitcheson v The State** [2018] FJSC 29; CAV0012.2018 (2 November 2018), paras12 - 15.
- [12] 1 year or 12 months for time spent in custody until guilty plea pursuant to section 24 of the Sentencing and Penalties Act 2009, and **Aitcheson v State** (supra).
- [13] Head sentence for Count 1 is 3 years imprisonment for 1<sup>st</sup> Accused, and 3 years imprisonment for 2<sup>nd</sup> Accused.

**Count 2 - Theft**

- [14] The maximum sentence for theft is 10 years imprisonment. The sentencing range for theft is 4 months to 3 years imprisonment - 12 months or 1 year is taken. (Paragraphs 16 and 17.)
- [15] 2 years added for aggravating circumstances of the Theft. 1 year deducted for mitigating circumstances leaving a balance of 2 years (Paragraphs 17 and 18.) 8

months is deducted for early guilty plea, and 1 year or 12 months for time spent in custody. Head sentence is 4 months. (Paragraphs 18, 19 and 20 of sentencing).

[16] The custodial sentence for both Count 1 Aggravated Burglary and Count 2, Theft are made concurrent resulting in the aggregate custodial term of 3 years for both accused.

### **(E). The Law**

[17] Section 21(c) of the Court of Appeal Act provides that a person convicted on a trial held before the High Court may appeal to this Court with the leave of the Court against the sentence passed on his conviction unless the sentence is one fixed by law.

[18] Under section 35(1)(a) of the same Act, a Judge of the Court may exercise the power of the court to give leave to appeal to the court.

[19] The test for granting leave to appeal to the Full Court was established in **Chand v State** [2008] FJCA 53 as follows:

*“To succeed in an application for leave to appeal, all that is required of the appellant is, to demonstrate arguable grounds of appeal.”*

[20] In **Caucau v State** [2018] FJCA 171, it was held that:

*“..... the test of “reasonable prospect of success” could be employed to differentiate arguable grounds from unarguable grounds at the stage of leave to appeal.”*

[21] The guidelines to be followed when a sentence is challenged on appeal were outlined in **Kim Nam Bae v The State** [1999] FJCA 29, that is, when a Judge acts as follows:

- (i) Acted upon a wrong principle;
- (ii) Allowed extraneous or irrelevant matters to guide or affect him;
- (iii) Mistook the facts;
- (iv) Failed to take into account some relevant consideration.

## **(F). Appellants' Case**

[22] The Appellant's written submissions filed on 25 June 2025 by the Legal Aid Commission analysed the laws on leave to appeal and the exercise of the sentencing discretion by the learned trial judge.

[23] The Appellant submits that it appeared the learned sentencing judge only considered the time spent in remand from the date the Appellants was arrested (06 September 2022) to the date they pleaded guilty in Court (21 August 2023). The approximate duration between these dates is 11 months and 15 days. A deduction of 1 year was allowed.

[24] It is submitted that section 24 of the Sentencing and Penalties Act 2009 applies when an accused is "held in custody prior to the trial of the matter". Section 24 states:

*"24. If an offender is sentenced to a term of imprisonment, any period of time during which the offender was held in custody prior to the trial of the matter or matters shall, unless a court otherwise orders, be regarded by the court as a period of imprisonment already served by the offender."*

[25] The period from the date of conviction, (that is the date where an accused person pleads guilty, his or her guilt is determined once the Court enters a conviction upon admission of summary of facts) to the date of sentence (when the convicted accused is given his punishment for the offence he is guilty of) is not covered. In this case, the sentencing was delayed for a considerable time after the conviction of the Appellants.

[26] The Appellant submits that the intention of sections 15 (3) and 14 (2) (g) of the constitution is to have matters determined and concluded (sentencing included) within a reasonable time. These provisions state:

*"15 (3) Every person charged with an offence and every party to a civil dispute has the right to have the case determined within a reasonable time."*

*14 (2) (g) Every person charged with an offence has the right to have the trial begin and conclude without unreasonable delay."*

[27] If a person pleads guilty and conviction is entered, the use of “prior to the trial” in section 24 of the Sentencing and Penalties Act 2009 would imply that the sentence is delivered within a reasonable time or a negligible timeframe. This interpretation would be consistent with the provisions of the constitution.

[28] The Appellant submits that, the learned sentencing Judge failed to give consideration to the duration of time spent in remand from the date of conviction to the date of sentence as time already served. The approximate duration of time in between the date of conviction (22 August 2023) to the date of sentence (09 July 2024) amounts to 10 months and 17 days, which is a significant period and ought not to be disregarded by the Court. Section 23(1) of the Sentencing and Penalties Act 2009 states that a sentence of imprisonment commences on the date that it is imposed. That there are no powers for the Courts to backdate any sentences of imprisonment. That the only way to give a proper consideration to the time spent from date of guilty plea to date of sentence is to determine that the said duration is time served from the final sentence.

[29] The Appellant submits that the Supreme Court in Korocakau v State [2006] FJSC 5 and the Court of Appeal in Sharma v State FJCA 178 held when a sentence is reviewed on appeal, it is the ultimate sentence rather than each step in the reasoning process that must be considered in determining whether the sentencing discretion has miscarried, the appellate courts do not rely upon the same methodology used by the sentencing Judge. The approach taken by them is to assess whether in all the circumstances of the case the sentence is one that could reasonably be imposed lies within the permissible range.

[30] In conclusion, the Appellants submits that:

*“34. Time spent in custody cannot be subsumed with other mitigating factors as the Courts are bound by section 24 of the Sentencing and penalties Act 2009 to consider the period of imprisonment already served. Therefore, the total sentence arrived at after adjustments are made for aggravating and mitigating factors in this case would be 4 years imprisonment. This is still within the permissible range of the appropriate tariff identified at paragraph 28 above.*

*35. The total period for time in remand for the Appellants is approximately 22 months. When an accurate allowance is made for this period, the Appellants would actually be required to serve approximately 2 years 2 months imprisonment. The only reason that the final sentence is below the identified tariff is because of the substantial amount of time spent in remand and we submit that the Appellants ought not to be deprived of the benefit of having a sentence outside the tariff.*

*36. The Appellants have served almost 1 year of their impugned sentence. It is only proper for leave to be granted so that the full Court is able to determine the appropriate sentences for the Appellants.”*

### **[G]. Respondent’s Case**

[31] The Respondent filed its written submissions on 18 July 2025, and the Respondent accepts the appeal ground against sentence which argues that the learned sentencing Judge overlooked to fully discount for time in remand by both Appellants and His Lordship only discounted for time in custody from the arrest to their guilty pleas. That the total remand period from date of arrest on 06 September 2023 to date of sentencing on 09 July 2024, is 1 year, 10 months and 2 days. The Respondent accepts that the learned sentencing Judge was mistaken in not fully discounting the total remand period and submits that in light of the issues raised by the Appellants, leave to appeal sentence ought to be allowed.

### **[H]. Analysis**

[32] The Appellants allege that the learned sentencing Judge was mistaken in not fully deducting their respective time in remand, especially the time they were in remand from the date of the guilty plea to the date of sentence, which covers a period of 10 months and 17 days. It is not disputed that the time spent in remand by the Appellants from the date of conviction to the date of sentencing, was not mentioned and did not feature in sentencing.

[33] 1 year was discounted for the period between the arrest of the Appellants and their conviction.

[34] Given the delayed sentencing, the Full Court could consider whether, as argued by the Appellants, the intent and spirit of the constitution in sections 15(3) and 14(2)(g) , that the trial process including sentencing ought to be done within a reasonable time . And would it be reasonably acceptable for an accused person who has been convicted of an offence to expect to be sentenced within a reasonable time from the date of conviction.

[35] Section 24 of the Sentencing and Penalties Act 2009 only applies to time in custody before trial, to the effect that if an offender is sentenced to a term of imprisonment, any period of time during which the offender was held in custody prior to the trial of the matter or matters, shall, be regarded by the court as a period of imprisonment already served by the offender. That applies unless a court otherwise orders. There is no similar provision covering the custody period between the time of conviction and the time of sentencing, which appear to support and reinforce the argument that a sentence must be handed down within a reasonable time after the offender is convicted, and must not be unreasonably delayed. There is also no provisions for a court to backdate a sentence. Under section 23(1) of the Sentencing and Penalties Act 2009, a sentence commences on the date it is imposed. The Full Court is to consider the issue which appear not to be contentious.

[36] The Respondent accepts the Appellant’s ground and submits as follows:

*“2.4 It is respectfully accepted that His Lordship at sentencing was mistaken to have overlooked to discount for the full time in remand awaiting sentence and had only discounted for the time in custody from arrest up until the guilty pleas. The overlooked time in remand is respectfully meaningful and substantial and ought to be rectified by the Honorable Full Court.”*

[37] The ground is arguable.

**Order of Court**

1. *Application for leave to appeal against sentence is allowed.*



  
Hon. Justice Alipate Qetaki  
RESIDENT JUSTICE OF APPEAL

**Solicitors**

Legal Aid Commission for the Appellants

Office of the Director of Public Prosecutions for the Respondent