

IN THE HIGH COURT OF FIJI
AT SUVA

CRIMINAL JURISDICTION

CRIMINAL CASE NO.: HAC 084 OF 2006

BETWEEN:

THE STATE

AND:

1. FILIPE DELANA
2. TONY MAR

Counsel: Ms. L. Lagilevu for the State
Mr. T. Terere (Duty Solicitor) for 1st Accused
2nd Accused in Person

Date of Sentence: Thursday 5th June, 2008

SENTENCE

Filipe Delana

- [1] Filipe Delana you were jointly charged with Tony Mar with one count of robbery with violence and one count of unlawful use of motor vehicle. On 28th May 2008, at 9.30 am, after the trial had commenced, you informed the Court that you wanted to change your plea to guilty. I stood down the case until 2.15 pm to allow you time to consult a duty solicitor from the Legal Aid Commission and to give you an opportunity to think about the consequences of pleading guilty. At 2.15 pm, you maintained your stance and pleaded guilty to the charges. Albeit the pleas of guilty are late, you are entitled to credit.
- [2] Because you are unrepresented, I enquired from you on your understanding of entering a guilty plea. I carefully explained your trial rights and you informed the Court that you understood your rights and were waiving them.

[3] I am satisfied that:

- (i) you understood your trial rights and knowingly and intelligently waived them
- (ii) your waiver and pleas are freely and voluntarily made
- (ii) you understood the consequences of the pleas
- (iv) there is a factual basis for the pleas.

[4] I accept your pleas of guilty and convict you accordingly on both counts as charged.

[5] Mr. Terere from the Legal Aid Commission, who appeared as a duty solicitor, mitigated on your behalf.

[6] You are 29 years old and single. You were raised by your maternal grandmother. Your father passed away when you were an infant. You have attained Class 3 education. You have a child from a defacto relationship.

[7] You have 31 previous convictions since 1996. You are not entitled to any credit for previous good character. You committed the offences in the present case after escaping from prison. Currently you are a serving prisoner. You are due for release on 15th May 2009. You have spent much of your adult life in prison and you are not showing any sign of reform. A pastor from All Nation Christian Fellowship who has been visiting you in prison and counseling you has provided reference. I have taken the pastor's reference into account.

[8] The facts are that on 25th October 2006 at 10.00pm you and Tony Mar hired the complainant's taxi. The complainant was a young man in his early twenties. He drove you to various destinations on your request. At first, you treated the

complainant well. You gave him the taxi fare and even bought him a BBQ meal. Obviously there was no planning involved to rob him. You were drinking alcohol in the taxi. You went to Kinoya to drop a female companion. When she got off the taxi, your behavior towards the complainant changed. As the night went by you got very drunk. You punched the complainant and threatened him with a broken beer bottle. You placed the broken bottle to his neck. The complainant was forced into the boot of his taxi and driven to Laucala Beach where he was stripped naked, gagged with cloth and abandoned in the bushes. You and Tony Mar then drove off in the complainant's taxi after stealing his cash earnings.

- [9] The aggravating factors are the use of broken bottle and punches to threaten the complainant, the stripping and gagging of the complainant, the vulnerability of the complainant as a taxi driver, and the commission of the offences whilst in intoxication state.
- [10] The mitigating factors are your guilty pleas and the age of the offences. There is no evidence of serious physical harm to the complainant.
- [11] For the offence of robbery with violence I choose a term of 4 years as a starting point. I increase your sentence to a term of 6 years imprisonment to reflect the aggravating factors. I reduce your sentence by 3 years to reflect the mitigating factors and arrive at a term of 3 years imprisonment. I sentence you to 3 years imprisonment for robbery with violence and 4 months imprisonment for unlawful use of motor vehicle, to be served concurrently.
- [12] I have considered whether to make these sentences concurrent with your existing prison term and have decided to do so. I am of the view that a consecutive sentence will offend the totality principle. Therefore, I order that you serve these sentences concurrently with any existing term of imprisonment you are serving.

Tony Mar

- [13] Tony Mar you were convicted following a trial before assessors. I do not hold against you your trial rights.
- [14] The facts and the aggravating factors are same as above. Your mother and your pastor gave evidence at the sentencing hearing.
- [15] You were 18 years old when you committed the offences. You are the eldest of the six siblings of your parents. Your father was an internal auditor in the Ministry of Fijian Affairs. He passed away in 2000. You were 12 years old. You were emotionally affected by your father's death.
- [16] You are working as a junior carpenter at Khan's Joinery Works. Your employer has provided a reference in which he has said you are very prompt and always eager to learn. Currently, you are financially assisting your mother to pay for the education of your brothers and sisters. Your mother works as a house girl.
- [17] Your pastor said you are an active member of your church youth group. He has pleaded for mercy on your behalf. When your mother and your pastor gave evidence I saw you sobbing. You appeared to me as a frightened young man who is genuinely remorseful for his conduct.
- [18] You have one previous juvenile conviction for resisting arrest. I place no weight to your previous conviction and treat you as a person with previous good character.
- [19] The mitigating factors are your young age, personal circumstances, previous good character and the age of the offences.
- [20] I choose a term of 4 years imprisonment as a starting point. I increase your term to 6 years to reflect the aggravating factors. I reduce your term by 4 years to reflect

the mitigating factors and arrive at a term of 2 years imprisonment for robbery with violence and 4 months imprisonment for unlawful use of motor vehicle, to be served concurrently.

[21] I have considered whether to suspend your sentence and I have decided to do so because of the presence of special circumstances. It is well known that Fiji prisons are overcrowded with young Fijian men. The community is concerned about the increasing number of young Fijian men who ends up in the prison after being convicted of a crime and who is caught up in a vicious cycle of crime because of lack of rehabilitative programmes for prisoners. If a young person with previous good character has demonstrated signs of reform after committing an offence in which the victim was not physically injured, every effort should be made to keep that young offender out of prison. Of course each case should be assessed on its own facts. In this case, I am satisfied that Tony Mar is a reformed young man and he should be given a second chance. I suspend the imprisonment sentences for 3 years. Tony Mar, if in the next three years you commit another offence, you may have to serve your sentences of 2 years imprisonment and 4 months imprisonment in this case in addition to any other sentence imposed for the other offence.

[22] Given the special circumstances present in Tony Mar's case, which are not present in Filipe Delana's case, the disparity in their sentences, in my view, is justified.



Daniel Goundar
JUDGE

At Suva
Thursday 5th June, 2008

Solicitors:

Office of the Director of Public Prosecutions, Suva for the State
Office of the Legal Aid Commission, Govt. Buildings, Suva for 1st Accused
2nd Accused in Person