

IN THE HIGH COURT OF FIJI
AT SUVA
APPELLATE JURISDICTION

Criminal Appeal No: HAA3 of 2013

BETWEEN : **JOSESE KOROI**
Appellant

AND : **THE STATE**
Respondent

BEFORE : **HON. MR. JUSTICE PAUL MADIGAN**

Counsel : Appellant in person
Ms J. Prasad for the State

Dates of hearing : 1st March, 5th June 2013

Date of judgment : 10th June 2013

JUDGMENT

[1] On the 20th day of December 2012, the appellant entered a plea of guilty to one charge of robbery in the Magistrate's Court at Suva. He was sentenced the next day to a term of imprisonment of three years and six months. It is against this sentence that the appeal is made on the grounds that 1) it is harsh and excessive, and 2) that his mitigation was not adequately recognized.

[2] The summary of facts agreed below by the appellant were that at about 8.30pm on the 10th December 2012, a 35 year old accountant, an ethnic Chinese, was shopping in Usher Street and was making his way to Suva

Market. The accused/appellant “came towards him and forcefully took the wallet from the victim’s pocket and ran away.” The two were at the market when the accused took \$300 out of the wallet and threw it back at the victim. The accused was arrested a few days later at the cinema. He made admissions under caution.

[3] The facts conclude by stating that the accused “is the (sic) frequent offender.”

[4] Apart from the fact that a Court should never know until sentencing whether an accused is well known to the Police or not; the facts are deficient in that the offence of robbery is barely made out. The force used to take the wallet is not specified. There does not appear from the facts to be any violence used or injury caused to the victim, let alone threats.

[5] However, the accused pleaded guilty to the offence of robbery and he is not appealing conviction.

[6] The appellant was at the time 32 years old and separated with three children. He earned \$120 per week as a seaman. He was remorseful and asked for forgiveness and leniency from the Court. He said that he alone was responsible for the care of the three children, his wife having left him.

[7] The appellant has 8 previous convictions in the last ten years, 2 of which were for larceny and nothing in the 2 years prior to this offence.

[8] In casting his sentence, the learned Magistrate took a starting point for this offence of 6 years in consideration that he was not a first offender.

Six years for such opportunistic theft by snatching is a very high starting point indeed and the Magistrate cannot use prior offending to enhance the starting point. Previous offences preclude any reduction for good behavior but do not aggravate the sentence.

[9] This Court said in ***Nawai and Tamanitokula*** HAA023 of 2011 (*Ltka*):

“robbery with violence is an offence which presents itself to the Courts in many various manifestations, from the minor “punch and pickpocket” to the very serious gang invasion of private homes with theft and injury to the occupants. Serious though this offence may be, it cannot be equated to acts of violence with weapons used causing injury to the victim.”

[10] These dicta apply equally to this case. Without any information as to what constituted “forcefully” the Court can only assume that it was more of a theft by snatching than a serious robbery and the sentence should reflect that.

[11] Pursuant to section 256(3) of the Criminal Procedure Decree, I quash the sentence passed below and sentence afresh.

[12] I take a starting point of 4 years for the offence. It must have been a frightening experience for a man out doing his Christmas shopping to have his wallet rather forcefully taken. From this 4 year term I deduct 1 year for the appellant’s mitigation of caring for his three children alone on an income of \$120 per week. There can be no discount for clear record obviously but he will receive a full third discount for his plea of guilty.

[13] The appeal succeeds to the extent that the sentence of 3 years 6 months is quashed and a new sentence of 2 years is imposed. I decline to set a minimum term before he is eligible for parole. The 2 years to run from 21st December 2012.

Paul K. Madigan
JUDGE

At Suva
10th June 2013