

IN THE HIGH COURT OF FIJI
AT SUVA
[CRIMINAL JURISDICTION]

CRIMINAL CASE NO. HAC 299 OF 2018

BETWEEN : STATE

AND : JAMES ASHWIN RAJ

Counsel : Ms U Tamanikaiyaroi for the State
Mr K Chang & Ms M Singh for the Accused

Date of Hearing : 27 & 28 January 2020

Date of Sentence : 31 January 2020

SENTENCE

- [1] James Ashwin Raj, this Court found you guilty of aggravated robbery after trial. The offence you have committed is objectively serious. The statutory aggravation is that you committed the robbery in company of others. The maximum penalty for this offence is 20 years imprisonment.
- [2] The victim is an adult male. He is a hairdresser by profession. He was walking down to his home with a friend after a night out in the early hours of 3 February 2018 when you approached him for a roll of cigarette with three other boys. While the boys distracted the victim's friend, you snatched the victim's mobile phone and bag containing \$30.00 cash from his hand and ran off. Both you and the victim are from the same neighbourhood. He considered you as his friend. He was shocked by your actions.

- [3] The tariff for grab and run street robbery is between 18 months and 5 years imprisonment (*Raqauqau v State* [2008] FJCA 34; AAU0100.2007 (4 August 2008) *Tawake v State* [2019] FJCA 182; AAU0013.2017 (3 October 2019)).
- [4] In assessing the seriousness of your actual conduct I take into account that you did not use any weapon or physical violence. You used minimum force to steal the victim's property. But you targeted the victim at a time of the night when the streets was empty.
- [5] You are 36 years old and claim to be self-employed as a tile layer. You have a teenage son from a partner you had in the past. However, none of these matters mitigate your offending.
- [6] Your criminal history is appalling. Most of your adult life was spent in engaging in anti-social behaviour – a total of 24 convictions since 2001 which includes 3 robbery in 2009 and 1 manslaughter in 2013. The courts have shown you leniency in the past but you have not made use of it to rehabilitate.
- [7] Since you have committed another offence of robbery, the Court has power to determine you as a habitual offender pursuant to section 11 of the Sentencing and Penalties Act. After having regard to your previous convictions for offences of a like nature this Court is satisfied that you constitute a threat to the community and orders your name to be entered in the records of the court as a habitual offender.
- [8] Section 12 of the Sentencing and Penalties Act permits the Court to determine the length of the sentence for you by having regard to the protection of the community as the principal purpose for which the sentence is imposed and in order to achieve that purpose, impose a sentence longer than that which is proportionate to the gravity of the offence. I have decided to exercise that statutory discretion given to the Court.
- [9] Although the seriousness of your actual conduct falls on the lower end of the tariff the Court will impose a sentence which is longer than that which is proportionate to the

gravity of the offence in order to protect the community from the repeated nature of your anti-social behaviour.

[10] Finally I make a downward adjustment to your sentence to reflect your remand period of 9 months and 14 days.

[11] You are sentenced to 4 years' imprisonment with a non-parole period of 3 years.



A handwritten signature in blue ink, appearing to be "D. Goundar", written over a dotted line.

Hon. Mr Justice Daniel Goundar

Solicitors:

Office of the Director of Public Prosecutions for the State
Legal Aid Commission for the Accused.