

IN THE HIGH COURT OF FIJI
AT SUVA
CRIMINAL JURISDICTION

CRIMINAL CASE NO. HAC 91/2023

STATE

vs

WILLIAM EZRA

<i>Counsels:</i> <i>Ms. Ali N</i>	-	<i>for Prosecution</i>
<i>Mr. Boseiwaqa K.</i>	-	<i>for Accused</i>

SENTENCE

1. **WILLIAM EZRA**, you were charged in this Court by the Prosecution for one count of Aggravated Robbery contrary to **Section 311 (1) (a)** of the **Crimes Act 2009**, as follows;

COUNT 1

Statement of Offence

AGGRAVATED ROBBERY Contrary to Section 311(1) (a) of the Crimes Act 2009

Particulars of Offence

WILLIAM EZRA and another on the 12th day of February 2023S at Cunningham in the Central Division, in the company of each other stole 1 x A71 Samsung Mobile phone and 1 x A13 Samsung mobile phone, the property of **RAHIL RITIK KUMAR** and immediately before stealing have used force on the said **RAHIL RITIK KUMAR**.

2. You pleaded guilty to the above count stipulated in the information filed by the Prosecution on 02/06/2023.
3. Summary of facts of this matter were read to you in open court and were admitted by you on 26/06/2023. They were, as follows:

SUMMARY OF FACTS

Complainant (PW1): Rahil Ritik Kumar, 18 years of age, FNU student of Cunningham.

PW2 – PC5404 Rusiate, 29 years old, Police officer at Valelevu Police Station.

PW3- pc 6288 Talikai 29 years old, Police Officer at Valelevu Police Station

Accused (A1) William Ezra, 19 years of age, Farmer, residing at Cunningham, Stage 3

Facts

- On the 12th day of February 2023 at around 10.46am Rahil Ritik Kumar (PW1) was on his way back from school at Fiji National University. He was walking along Cunningham Stage 1, he reached a spot opposite Pillay's string where he was approached by two boys.
- One of the two boys was alleged to be William Ezra who with the help of the other boy had punched Rahil Ritik Kumar in the face and grabbed his bag with two Samsung mobile phones.
- On that same day, PW2 (PC Rusiate) was on patrol with the Operation team from Valelevu Police Station covering Cunningham area when they received a call that there was a robbery at Cunningham.
- PW2 and his team rushed to the alleged crime scene where they met the complainant. He was still explaining to the Police what had happened when he saw an i-taukei boy wearing a maroon round neck walking towards FEA road and the complainant then told the Police that he was the one that robbed him.
- PW2 ran towards FEA road and identified the accused as William Ezra. PW2 then called out William Ezra's name, he looked at him and started running towards a bush through a small settlement and vanished.
- On the 25th of February 2023 PC 6288 Talika (PW5) of Valelevu Police Station at around 2048hrs was on her patrol at Cunningham Stage 1 conducting house to house raid to locate William Ezra as he was in wanted person list. PW 3 had identified William Ezra standing one meter apart from him and he then arrested him and mentioned the reasons for his arrest. Then he was escorted to the Nabua Police Station where he was interviewed under caution by A/DCPL Aseri where he admitted to the allegation against him.
- The total value of the stolen items were \$1605.00.

Admission of A1 as per A1's record of Interview

- A1 admitted that after the drinking party at Delai Nausori bus stop, at Cunningham he walked up along the Cunningham Road with the other boy from Nausori who asked him to follow the Indian boy. It was a few meters away from the bus stop where the other boy from Nabua threw a few punches at the Indian boy. A1 grabbed the bag away from him and ran towards the CDP AREA.
 - A1 admitted that when they reached the Cunningham substation area a Police Officer was calling his name, but he kept on running away.
 - The Samsung A71 was recovered during the investigation.
 - The Accused has no previous conviction.
 - On 2nd June 2023 A1 pleaded guilty as charged on his own free will.
4. In comprehending with the gravity of the offence you have committed, I am mindful that the maximum sentence prescribed by law for Aggravated Robbery is 20 years' imprisonment.
5. However, the tariff depends on the nature and circumstances of the robbery at issue. In the case of **The State v EPARAMA TAWAKE**¹, the **Supreme Court of Fiji** has updated the applicable tariff for Aggravated Robbery, by the below pronouncement:

“Once the court has identified the level of harm suffered by the victim, the court should use the corresponding starting point in the following table to reach a sentence within the appropriate sentencing range. The starting point will apply to all offenders whether they pleaded guilty or not guilty and irrespective of previous convictions.”

¹ CAV 0025 of 2019 [Court of Appeal No. AAU 0013 of 2017]

	ROBBERY (Offender alone and without a weapon)	AGGRAVATED ROBBERY (Offender either with another or with a weapon)	AGGRAVATED ROBBERY (Offender with another and with a weapon)
HIGH	Starting point: 5 years imprisonment Sentencing Range: 3 – 7 years	Starting Point: 7 years imprisonment Sentencing Range: 5 – 9 years	Starting Point: 9 years imprisonment Sentencing Range: 6 – 12 years imprisonment
MEDIUM	Starting point: 3 years imprisonment Sentencing Range: 1 – 5 years	Starting Point: 5 years imprisonment Sentencing Range: 3 – 7 years imprisonment	Starting point: 7 years imprisonment Sentencing Range: 5 – 9 years imprisonment
LOW	Starting Point: 18 months imprisonment Sentencing Range: 6 months – 3 years.	Starting Point: 3 years imprisonment Sentencing Range: 1 – 5 years imprisonment	Starting point: 5 years imprisonment. Sentencing Range: 3 – 7 years imprisonment.

6. In this matter, you have committed this offence with the assistance of another individual. Therefore, in assessing the objective seriousness of offending in this matter, I considered the maximum sentence prescribed for the offence, the degree of culpability, the manner in which you committed the offence and the harm caused to the complainant. I gave due cognizance to the sentencing guidelines stipulated in **Section 4** of the **Sentencing and Penalties Act 2009**. In the present matter, you have committed this offence on a university student when he was proceeding on the road. Considering the circumstances of this case, **WILLIAM EZRA**, I start your sentence with a starting point of 3 years imprisonment, i.e. in the low-range of the applicable tariff.

7. On promulgating the above mentioned table for tariff for the offence of Robbery in the case of **The State v EPARAMA TAWAKE**², the Supreme Court has also ventured to identify aggravating and mitigating factors, as below:

“Having identified the initial starting point for sentence, the court must then decide where within the sentencing range the sentence should be, adjusting the starting point upwards for aggravating factors and downward for mitigating ones. What follows is not an

² Ibid

exhaustive list of aggravating factors, but these may be common ones:

- *Significant planning*
- *Prolonged nature of the robbery*
- *Offence committed in darkness*
- *Particularly high value of the goods or sums targeted*
- *Victim is chosen because of their vulnerability (for example age, infirmity or disability) or the victim is perceived to be vulnerable*
- *Offender taking a leading role in the offence where it is committed with others*
- *Deadly nature of the weapon used where the offender has a weapon*
- *Restraint, detention or additional degradation of the victim, which is greater than is necessary to succeed in the robbery.*
- *Any steps taken by the offender to prevent the victim from reporting the robbery or assisting in any prosecution.*

Again, what follows is not an exhaustive list of mitigating factors, but these may be common ones:

- *No or only minimal force was used*
- *The offence was committed on the spur of the moment with little or no planning*
- *The offender committed or participated in the offence reluctantly as a result of coercion or intimidation (not amounting to duress) or as a result of peer pressure*
- *No relevant previous conviction*
- *Genuine remorse evidenced, for example by voluntary reparation of to the victim”*

8. In aggravation, Prosecution informs this Court that the value of the items that you robbed from the victim was very high and it amounted to \$ 1605.00. Further it is highlighted that out of the two phones you robbed only one phone had been recovered. However, I don't intend to increase your sentence on this ground.

9. In mitigation, the Defense counsel has informed Court that you are 20 years of age and at the time of commission of this offence you didn't use any force on the victim and there was no preplanning. In consideration of your age, I notice that your rehabilitation chances are high. Therefore, I intend to consider your rehabilitation potential, which should be balanced with deterrence and community protection. For this end, I reduce your sentence by one (01) year.

10. Further, your counsel has informed the court that you have entered an early guilty plea and that you regret your action on the day in question. Still further, Court recognizes that by pleading guilty to the charge you have saved court's time and resources at a very early stage of the Court proceedings. For all these grounds in mitigation, you should receive a considerable discount in the sentence. In this regard, I give you a reduction of one third in your sentence.
11. The, Prosecution brings to the attention of this Court that you have been in custody since your arrest on 24/02/2023, amounting to 3 months, which period should be deducted from your sentence separately.
12. **WILLIAM EZRA**, in considering all the above detailed factors, I sentence you to **13 months** imprisonment. Further, with special emphasis on your young age and your level of involvement in the commission of this offence, with the authority given to me by **Section 26** of the **Sentencing and Penalties Act of 2009**, your sentence is partially suspended, where you shall serve **09 months** of your sentence forthwith, and the remaining period of **04 months** is suspended for **three (03) years**.
13. If you commit any crime punishable by imprisonment during the above operational period of three (03) years and found guilty by the Court, you are liable to be charged and prosecuted for an offence according to **Section 28** of the **Sentencing and Penalties Act of 2009**.
14. You have thirty (30) days to appeal to the Fiji Court of Appeal.



A handwritten signature in black ink, appearing to read 'Thushara Kumarage', written over a horizontal line.

Hon. Justice Dr. Thushara Kumarage

At Suva
This 8th day of August 2023

cc: 1. *Director of Public Prosecutions*
2. *Legal Aid Commission*