

IN THE HIGH COURT OF FIJI

AT LABASA

CRIMINAL JURISDICTION

Criminal Case No. HAC 51 of 2025

THE STATE

-v-

1. ALIPATE GAUNABALAVU

2. SAKIUSA DREVUSO

Counsel: Mr. E. Kotoilakeba for the State
Both Accused in person

Sentencing Hearing: 18 July 2025

Date of Sentence: 22 August 2025

SENTENCE

Procedural background

1. The offenders were first produced from custody in the Magistrates' Court at Labasa on 22 May 2025 and the matter was transferred to the High Court at Labasa on that date.
2. When first called in this Court, the offenders appeared in person and confirmed that they waived their right to counsel. They also indicated their wish to take a progressive approach. The prosecution requested 14 days for Information and disclosures. The offenders were keen to have the matter dealt with expeditiously. I allowed 14 days for the Information and disclosures and adjourned to 24 June 2025 for plea. I informed the prosecution that I expected a Summary of Facts to be available in order that the plea could be completed on that date.

3. On 24 June 2025, the prosecutor apologised to the Court for not being ready with the Information and disclosures. The excuse was that the police had failed to forward the docket to the ODPP. I informed the prosecutor that this was a wholly unacceptable excuse. The offenders had come to court with their written mitigation and were keen to have their matter dealt with. I expressed the Court's displeasure at this sorry state of affairs. Sadly, it has been my experience in my first year sitting in Labasa that this excuse is rolled out far too often. Clearly, there is a systemic problem, which not only wastes court time, but also prejudices accused persons. In this case, the offenders had been in custody since 20 May 2025. The Court had no option but to grant a final 7 days for Information and disclosures.
4. On 4 July 2025, the prosecution filed the Information, and requested 7 days for the typing of transcripts of the records of interview. The prosecution had failed to attend with the Summary of Facts as ordered. The offenders were arraigned and pleaded guilty, as earlier indicated. Unfortunately, the plea could not be completed because there was no Summary of Facts available. Mindful that, as young first offenders, all sentencing options remained open, the Court granted bail and ordered the preparation of pre-sentence reports.
5. On 18 July 2025, a Summary of Facts was read and agreed by the offenders. I found them guilty and convicted the offenders. I considered the written and oral sentencing submissions made by all parties.

Sentencing Remarks

6. **Alipate and Sakiusa**, you both pleaded guilty at the earliest opportunity to a single joint count of aggravated robbery.
7. On 18 July 2025, you both agreed a summary of facts establishing your guilt, and you were found guilty as charged and convicted.
8. In the early evening of 17 May 2025, as he walked to his relative's house in Vuniwai Settlement, you punched and kicked Mr. Rajinesh Kumar and robbed him of his Samsung mobile phone, his t-shirt and his slip-ons. Mr. Kumar suffered injuries requiring medical attention.

9. You were arrested the following day and made full confessions when interviewed after caution by the police.
10. To assist me in deciding on the most appropriate way of dealing with you, I requested the Social Welfare Department to prepare background reports, and I am pleased that you both fully cooperated in the preparation of those reports, which are favourable to you.

Pre-sentencing Reports

11. **Alipate**, you have recently turned 22 years of age, and were just shy of your 22nd birthday when you robbed Mr. Kumar.
12. Your pre-sentencing report was prepared by Mr. Tawake, who informs me that you left school after Year 12 and are now a full-time farmer in Taveuni. Your toil supports your wife and 7-month-old daughter.
13. Mr. Tawake spoke with family members and your pastor. Your wife describes you as supportive and always willing to help with feeding your baby and household chores. The close relative with whom you have lived for the past 5 years speaks of you as a dedicated family man, trying to do your best to support your young family. He says that you learned a huge lesson from the time you spent remanded in custody. Your pastor says that, despite the challenges faced by young families in your community, you remain committed to building a stable and loving home for your family. He vouches for you as a dedicated and hardworking husband and father.
14. You have expressed remorse for your offending and have shown a degree of insight.
15. Mr. Tawake assesses that you are a low risk to the community and considers that you may be appropriately dealt with under the Community Based Corrections Act.
16. **Sakiusa**, you are 25 years of age.
17. Your pre-sentencing report was also prepared by Mr Tawake, who informs me that you left school early due to financial difficulties.

18. You farm yaqona, dalo, cassava, and vegetables to support your wife and two daughters.
19. A close family member and your pastor speak well of you. You have expressed remorse for your offending and have shown a degree of insight.
20. Mr. Tawake assesses that you are a low risk to the community and considers that you may be appropriately dealt with under the Community Based Corrections Act.

Prosecution Sentencing Submissions

21. The prosecution has filed written sentencing submissions setting out the current sentencing practice for adult offenders for this type of street robbery. Based on this current practice, the prosecution assess that the level of harm is low, and submits that the starting point for sentence is 3 years' imprisonment, with a sentencing range of 1 to 5 years' imprisonment.
22. Very fairly, the prosecution has quite properly noted the factors that make your offending less serious are that you are both young first offenders who fully cooperated with the police and pleaded guilty at the earliest opportunity.

Defence Sentencing Submissions

23. **Alipate and Sakiusa**, I have read your written mitigation, which I understand you were assisted with by fellow remandees. Your submissions are refreshingly succinct and have assisted the Court. You are both young first offenders and fully cooperated with the police. You pleaded guilty at the first opportunity. You are both remorseful and promise not to re-offend.
24. **Alipate**, your wife has also written a letter of support. She expresses her heartfelt request that I consider the importance of your role in your family. She tells me that you are a devoted father and partner, a loving and attentive father who helps her feed and sooth your baby daughter. She states that she does not intend to diminish the seriousness of the matter before the Court or avoid accountability. Your wife expresses her confidence that, with appropriate support, you will grow from this experience and continue striving to be a better

man. She asks me to consider a sentence that allows you to remain connected to your family.

Analysis and disposal

25. Aggravated robbery is a serious offence which is reflected in the maximum sentence of 20 years' imprisonment. It can have significant psychological, emotional and financial effects on victims. Law-abiding members of the public ought to be able to walk the streets at night without fear of being mugged.
26. To reflect the seriousness of the offence of aggravated robbery, adult offenders are generally given a prison sentence, albeit such sentences are often suspended in the case of young first offenders.
27. It is now well-established by case law that the young age and/or lack of maturity of an offender do not cease to have any relevance on his or her 18th birthday. Full maturity and all the attributes of adulthood are not magically conferred on young people on their 18th birthdays. Experience of life reflected in scientific research is that young people continue to mature, albeit at different rates, for some time beyond their 18th birthdays. The youth and maturity of an offender continue to be factors that inform any sentencing decision even if an offender has passed his or her 18th birthday.
28. In this case, Sakiusa was considerably older than Alipate at the date of offending, albeit he was still a relatively young man of 25 years. I consider that your lack of maturity played a large part in your poor decision-making when you assaulted and robbed Mr. Kumar. In saying that, I must be clear that your youth and lack of maturity does not excuse your disgraceful and cowardly behaviour that night. It serves only to lessen your culpability to a limited degree.
29. Whilst I accept that your immaturity played a role in your offending, you both ought to have known better. You both have responsibilities to your young families to stay out of trouble in order that you may provide for them.
30. In my judgement, this type of prevalent street robbery offending is so serious that only a sentence of imprisonment would meet the objectives of sentencing set out in the Sentencing and Penalties Act 2009.

31. The appropriate starting point is 3 years' imprisonment. Leaving aside credit for your early guilty pleas, balancing the aggravating and mitigating factors, the appropriate sentence is 18 months' imprisonment. There were no significant aggravating factors other than you were both intoxicated. Set against that, you acted spontaneously. You were both of previous good character, and your culpability is reduced to some degree by your lack of maturity. Having observed you in Court, the manner in which you have conducted yourselves persuades me that your remorse for your actions is genuine.
32. Your best mitigation is that you cooperated with the police and pleaded guilty at the earliest opportunity, which has saved the Court's time and resources. I give you full credit for that, and reduce your sentence by one-third. The sentence you must serve is 12 months' imprisonment.
33. You spent around 6 weeks in custody before you were bailed on 4 July 2025. I round that up to 2 months, which is to be regarded as time served. The balance you must serve is 10 months' imprisonment.
34. That is a sentence that enables me to consider whether it would be appropriate to suspend your sentence.
35. In all the circumstances of this case, I have decided that suspension is justified. You are not hardened criminals, and I feel sure that you have no wish to repeat the experience of your period in custody on remand. You both have heavy family responsibilities, which I feel sure will be a powerful incentive for you not to re-offend. The manner in which you have taken responsibility for your offending leads me to believe that you will go on to be productive and law-abiding citizens.
36. **Alipate** and **Sakiusa**, you are sentenced to 10 months' imprisonment suspended for 3 years.
37. In the event, if at any time during the next 3 years you commit another offence punishable by imprisonment and are charged under section 28 of the Sentencing and Penalties Act 2009, if convicted, the court may impose a fine, and must restore the sentence that I have imposed today unless exceptional circumstances make this unjust.

38. 30 days to appeal to the Court of Appeal.




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Hon. Mr. Justice Burney

At Labasa
22 August 2025

Solicitors
Office of the Director of Public Prosecutions
Both Accused in Person