

IN THE FIRST CLASS MAGISTRATES COURT
AT SUVA
CRIMINAL JURISDICTION

Juvenile Case No. 71/2015

The State

V

V.T

For the State : Cpl Sautaki
For the Juvenile : Counsel Ms. David
Date of Punishment : 10th March 2017

SENTENCE

Introduction

1. The Accused has been charged with one count of **Robbery** contrary to Section 310 (1) (b) (i) of the Crimes Decree Number 44 of 2009.
2. This is an indictable offence which is triable summarily, and you were given the opportunity in terms of Electable Offences Decree 1988 and you elected the case to be tried by the Magistrate Court.

3. You have pleaded guilty to the charge on your own free will, on 11/02/2016, with a representation by a Counsel from Legal Aid. Being satisfied with your unequivocal plea of guilt, I convict you to the offence of Robbery as set out in the charge.
4. The prosecution has filed Summary of Facts on 18/02/2016, which has been duly admitted by you. It revealed that on 13th December 2015, at about 11.00 am, you have snatched a purse from one Violet Roggers, 71 year old lady who was walking along Qauia Road, at Qauia Settlement, Lami. The purse contained \$8.00 and other personal identification cards.

Tariff

5. The maximum sentence for Robbery is 15 years imprisonment. The tariff for this offence has been discussed by Mr. Justice Madigan in the case of Rarawa v The State Criminal Appeal No HAA 5 of 2015. (30 April 2015) as follows;

<i>a. Aggravated robbery</i>	:	<i>10-16 years;</i>
<i>b. Robbery (but with concomitant violence)</i>	:	<i>8-14 years;</i>
<i>c. Robbery without violence</i>	:	<i>2-7 years."</i>

Mitigating Factors

6. In your mitigation submissions, it is submitted that you were 17 years and 9 months old at the time of the offence and you are a first offender, who is remorseful of your act and seeking forgiveness of the court.

Early Guilty Plea

7. You have tendered an early guilty plea which could be considered as a strong mitigating factor, subject to certain concerns.

8. In *Rokini v State* [2013] FJHC 680; HAA16-19.2013 (12 December 2013), Justice Gounder quoted from the Court of Appeal Judgment *Daunabuna v. The State* (2009) FJCA 23; AAU0120.2007 (4 December 2009) "the Court of Appeal highlighted the considerations that went to the weight of a guilty plea at [16]..." "The weight to be given to a guilty plea depends on a number of factors. Some of these factors were identified by Hunt CJ at CL in *R v. Winchester* (1992) 58 A Crim R 345 at 350:"
9. Such factors mentioned in the above case could be summarised as follows;
- (a) Leniency to be adopted on an early guilty plea depends on different factors;
 - (b) Contrition or some other quality of attribute shown in guilty plea, should be considered independently from the mere fact that the person has pleaded guilty;
 - (c) The leniency approach will largely depend on whether or not the plea resulted from the recognition of the inevitable;
 - (d) The stage (when) of the case, in which the plea of guilt was entered or indicated is also important.
10. You have pleaded guilty at the earliest available opportunity saving time of court and the expenses of a full trial. According to your submissions, you are remorseful and seek forgiveness of court. Such facts show that you have pleaded guilty because you are truly remorseful of your act. Therefore, it is my opinion that your early guilty plea should attract a considerable concession on your Sentence.

Aggravating Factors

11. Victim of this case was a 71 year old lady who was walking back home from the grocery store. The vulnerability and the age of the victim have to be considered as an aggravated factor. Supreme Court decision (24th April 2015) of *Wallace*

Wise CAV 0004 of 2015, the court has listed factors which could be considered as aggravating. One of them is "*victims elderly or vulnerable including the frightening of small children.*"

Sentence

12. Considering all the above facts and law, I select three (3) years imprisonment term as a starting point and add another 1 year for the aggravating factors mentioned above, which will reach to a four (4) year interim imprisonment term. Then I deduct one (1) year for the early guilty plea and another one (1) year for other mitigating factors as young age and remorsefulness, which will make the final sentence of two (2) years imprisonment term.

13. Now I will consider whether the court should suspend your sentence.

14. Purposes of imposing sentence by court are mentioned in section 4 of the Sentencing and Penalties Decree 2009. They are;

- (a) To punish offenders to an extent and in a manner which is just in all circumstances;
- (b) To protect the community from offenders;
- (c) To deter offenders or other persons from committing offences of the same or similar nature;
- (d) To establish conditions so that rehabilitation of offenders may be promoted and facilitated;
- (e) To signify that the court and the community denounce the commission of such offences; or
- (f) Any combination of these purposes.

15. Snatching a purse from a person who is walking on the road in the middle of the day, is a serious offence which is undoubtedly denounced by the society. Community should be protected from such activities and they should be free from fear to move around especially in day time. These types of offenders must deter from committing further offences in this nature.
16. Prosecution has filed this case in the Juvenile Court considering you as a Juvenile. However, according to your birth registration details your date of birth is 10/02/1998. Date of the offence is 13/12/2015 and you were 17 years 10 months old at the time of the offence. The term "Juvenile" has been interpreted in section 2 of the Juvenile Act as "*a person who has not attained the age of Seventeen years, includes a child and a young person*". This clearly shows that you do not come under the purview of the Juvenile Act. However, you have passed only 10 months to be disqualified as a Juvenile according to the interpretation. Therefore I believe that it is logical to treat you as a young person (not in terms of the interpretation of a 'Young Person' in the Juvenile Act) who should be given a special consideration for your age. The rationale behind of having special provisions like Juvenile Act is the tender age.
17. It is submitted in your mitigation that you have studied up to Form 6 at Lami High School and stopped schooling in 2015. Your Social Background Report says you wish to return to vocational training which you have attended halfway, and your grandfather has promised to direct you to such training.
18. Even though, it is undisputed that the offenders of this calibre should deter from further offending, in view of your young age and your interest in pursuing further education, I believe that you should be given an opportunity for rehabilitation. It is my opinion that you will not be a risk to the society if you pursue further education and engage in an employment.

19. In the above context, an imprisonment term as the sentence, would not serve the purpose of rehabilitating you as a first, young offender. This view is supported by Justice Shameem in Nariva v The State [2006] FJHC 6; HAA0148J.2005S (9 February 2006); as follows;


"The courts must always make every effort to keep young first offenders out of prison. Prisons do not always rehabilitate the young offender. Non-custodial measures should be carefully explored first to assess whether the offender would acquire accountability and a sense of responsibility from such measures in preference to imprisonment."

20. On a careful consideration of the law and facts as aforementioned, I decide that a custodial sentence is not warranted in this matter. Therefore, I suspend your sentence for a term of 2 year period.

21. The nature of your sentence is explained to you in Court. If you re-offend during the suspension of your sentence, this sentence may be activated under section 28 of the Sentencing and Penalties Decree 2009.

22. 28 days to Appeal.

At Suva
10th March 2017


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Geethani Wijesinghe
Resident Magistrate

