

IN THE RESIDENT MAGISTRATES COURT
AT SUVA
CRIMINAL JURISDICTION

Nasinu Juvenile Case No. 41 of 2018

Extended Jurisdiction File No. 25 of 2018

The State

v

D T (Juvenile)

For the State : PC Saula
For the Juvenile : Counsel Mr. Kumar (Legal Aid)
Date of the Punishment : 28th March 2019

ORDER OF COURT

Introduction

1. You have been charged with one count of **Attempted Aggravated Robbery** contrary to Section 311(1) of the Crimes Act 2009.

Particulars of the Offence

You (the juvenile) and another on the 16th day of June 2018 at Nasinu , in the Central Division, attempted to rob Ronald Kumar of his mobile and wallet and immediately before such attempt used force by pushing said Ronald Kumar.

2. Attempted Aggravated Robbery is an indictable offence and the case was transferred to the High Court on 20/06/2018 by Nasinu Magistrates Court.

Subsequently, the High Court has granted extended jurisdiction to the Juvenile Court on 13/08/2018, in terms on Section 4(2) of the Criminal Procedure Act 2009.

3. You have pleaded guilty to the charge on 03/09/2018 on your own free will and with a representation by a counsel from Legal Aid.
4. The prosecution filed the Summary of Facts on 17/09/2018 which was duly admitted by you. It revealed that on 16th June 2018, at about 12.45am, the complainant has gone to a shop in Nadawa with one of his friends to buy cigarettes. As there were 4 youths near the shop, he has not stopped the car there and checked in another shop which had been closed by that time. Then they have come back to the first shop and the complainant has gone to the shop while his friend was waiting in the car.
5. When he returned to the Driver's door of the car, two boys have come behind and one has held him by putting his one arm on complainant's mouth and the other arm across his stomach while the other one was trying to put his hand into complainant's pocket. The boys have pushed him so he knelt down on the ground and they again have tried to take out his mobile and the wallet. The complainant has shouted for help and the shop keeper has come out and the boys have run away.
6. At the same time, the other two boys have tried to rob the friend of the complainant. The complainant has sustained injuries during the incident.
7. After investigations, you have been arrested and interviewed under caution whereby you have admitted committing the alleged offence.
8. Being satisfied with your unequivocal plea of guilt and the admitted summary of facts, which satisfy the elements of the offence, I find you guilty to the offence of **Attempted Aggravated Robbery** as set out in the charge.

Tariff

9. Section 44 (1) of the Crimes Act provides that *"A person who attempts to commit an offence is guilty of the offence of attempting to commit that offence and punishable as if the offence attempted had been committed"*
10. The maximum penalty for Aggravated Robbery is 20 years imprisonment. The tariff for street mugging has been discussed in *Raqauqau v State* [2008] FJCA 34; AAU0100.2007 (4 August 2008) as *18 months to 5 years imprisonment*.
11. In addition to the aforementioned tariff, in terms of section 30(3) of the Juvenile Act, this court has a limitation in deciding an appropriate punishment for young persons (between 14 and 18 years of age), which says, *a young person shall not be ordered to be imprisoned for more than 2 years for any offence*.

Aggravating Factors

12. The offence has been committed in late hours in the night with group of 4 people.
13. You have committed this offence while on bail for the case number 06 of 2018, where you have been charged with one count of Burglary and one count of Theft.

Mitigating Factors

14. You are 17 years old.
15. You are remorseful and seek forgiveness of the court.
16. You have promised not to re-offend.
17. You have co-operated with the police investigations.

Early Guilty Plea

18. You have pleaded guilty at the earliest available opportunity saving time of the court and expenses of a full hearing. According to your submissions, you are remorseful. Therefore, your early guilty plea should attract a considerable concession on your punishment.

Analysis & the Punishment

19. Aggravated Robbery is considered to be a very serious offence in this country hence undoubtedly denounced by the society. Such behaviour creates insecurity among citizens of their belongings and fear of their lives. You have acted with others without a least respect for the others freedom and rights. Offenders of this caliber should be deterred from committing further offences and the punishment should reflect the same approach.

20. The prosecution has marked the Medical Examination Report of the complainant and he has got abrasions on his right hand knuckles, small wound in left arm, abrasions on right knee and left cheek.

21. Considering the nature of the offence, aggravating factors, mitigating factors including the early guilty plea and the statutory limitation, I impose you 12 months imprisonment term for the offence of **Attempted Aggravated Robbery**.

22. I have deviated from the accepted tariff considering the statutory limitation imposed by section 30(3) of the Juvenile Act with a limitation of maximum punishment of 2 years imprisonment for young persons.

23. I will now consider whether your punishment should be suspended.

24. The court called for a Social Background Report on you, to consider in deciding an appropriate punishment for you. The Report submits that you are living with your maternal uncle's family since you were an infant. You have dropped out of school in Form 5 and your family has observed behavioural changes of you since you were 16 years old. You have run away from home and beyond the control of your guardians. Your guardian father informed court that you are currently not living with them but living with your friends.
25. This is not your first offence and the court is not in a position to give you any concession on your previous good character.
26. The court is mindful of the fact that you are at a young age. Rehabilitation aspect of young (juvenile) offenders often outweighs the deterrence effect of punishment. However, the court has to strike a balance between the gravity of the offence you have committed and your rehabilitation.
27. It is revealed from your Social Background Report that your guardians are not in a position to supervise or guide you on your rehabilitation as you are beyond their control. It further reports that you have not lived with your biological parents since early days of your life.
28. Considering your rehabilitation as well as the seriousness of the offence you have committed, the court orders to suspend your punishment partially in terms of section 26 of the Sentencing and Penalties Act. You are ordered to serve 3 months imprisonment term at the Juvenile Boys Rehabilitation and Development Centre and the rest 9 months imprisonment term is suspended for a period of 2 years. You have spent 1 month and 14 days in remand for this case and I deduct such period from your imprisonment term. Therefore your actual period to be served at the Juvenile Boys Rehabilitation Centre is **1 month and 14 days**.

29. In addition to the above punishment, I order to place you on probation for a period of 1 year, with following conditions, with the supervision of the probation officer, Department of Social Welfare, Suva office, acting under the section 15(1)(e) of the Sentencing and Penalties Act 2009 and section 3(1) of the Probation of Offenders Act. Court clerk is advised to send a copy of this order to the Probation Officer, Suva

Conditions

- i. *Undergo counselling with the assistance of Department of Social Welfare*
- ii. *Be in good behaviour.*

30. I further direct that your counselling should be started with immediate effect while you are serving at the Juvenile Boys Rehabilitation and Development Centre.

31. The effect of the Probation Order and suspended punishment are explained to you in Court. You are required to be in good behaviour. If you breach the order and re-offend, you will be charged under section 5(2) of the Probation of Offenders Act as well as this punishment may be activated.

32. As this court has exercised the extended jurisdiction of the High Court, parties may appeal to the Court of Appeal within 30 days, with the leave of the Court.

Summary of the punishments-

1 month and 14 days to be served at the Juvenile Boys Rehabilitation Centre

9 months - suspended for 2 years

Probation order for 1 year with conditions

At Suva

28th March 2019



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Geethani Wijesinghe
Resident Magistrate