

IN THE COURT OF APPEAL  
[On Appeal from the High Court]

Criminal Appeal No. AAU116 of 2013  
[Labasa High Court HAC12 of 2012]

BETWEEN : SOLOMONE BONASEVA  
*Appellant*

AND : THE STATE  
*Respondent*

Coram : Goundar JA

Counsel : Mr. S. Waqainabete for the Appellant  
Mr. M. Korovou for the Respondent

Date of Hearing : 28 August 2014

Date of Ruling : 15 September 2014

RULING

- [1] This is an application for an extension of time for leave to appeal against sentence pursuant to section 21(1)(c) of the Court of Appeal Act. The appellant was convicted and sentenced to 8 years' imprisonment with a non-parole period of 6 years by the High Court at Labasa after he pleaded guilty to a charge of aggravated robbery contrary to section 311(1)(a) of the Crimes Decree 2009. The maximum penalty prescribed for aggravated robbery is 20 years imprisonment. The sentence was imposed on 30 May 2013. The appellant filed his application for leave to appeal against sentence on 14 October 2013. The initial application is dated 6 September 2013 and was filed in person from the Labasa Corrections Centre.
- [2] Section 26(1) of the Court of Appeal Act prescribes a 30-day appeal period within which an appeal must be lodged. If the 30-day appeal period has expired, then an appeal can only be lodged if the Court has granted an extension of time. Section 35(1) of the Court of

Appeal Act provides a single judge with power to enlarge the time for lodging an appeal. The discretion to grant an enlargement of time is exercised by considering the following matters:

- (i) The reason for the failure to comply.
- (ii) The length of the delay.
- (iii) Is there a question which justifies serious consideration?
- (iv) If there has been substantial delay, have any of the grounds such merit that they will probably succeed?
- (v) The degree of prejudice to the Respondent in enlarging time (*Livai Nawalu v The State unreported Criminal Appeal No. CAV0012/2012 28 August 2013 at 2*)

- [3] The appeal was filed approximately three months after the appeal period had expired under section 26 of the Court of Appeal Act. The reason for the delay is not clear. The appellant's incarceration at the Labasa Corrections Centre may have been an impediment for him to lodge a timely appeal at the Court of Appeal Registry in Suva. But the length of the delay is significant. There has to be compelling grounds to disregard the appeal period when the length of the delay is significant. The appellant is a mature and educated person. He is a former government employee and was studying Economics at the University of the South Pacific when the sentence was imposed on him. Furthermore, he was represented by counsel in the High Court.
- [4] Fortunately, the State is not alleging any prejudice arising from the delay. The real issue is whether there is any merit in the appeal.
- [5] The appellant's sole ground of appeal is:

1. "Sentence is harsh and excessive due to the following:

- a) The Learned sentencing Judge did not take the Appellant's guilty plea as a separate mitigating factor; and
- b) No physical injuries sustained by the victims."

- [6] The facts of this case have been succinctly summarized by the High Court judge at paragraph [3] of his sentencing remarks:

“The facts of the case were that on the 30<sup>th</sup> January 2012 at around 2.30 am, a group of armed men forced their way into the home of an Indo-Fijian businessman in Wainikoro, Labasa. He opened the door of his bedroom when he saw the Fijian men wearing masks running towards him. He fired a gun to scare them away but the men overpowered him, tied him up and left him on the floor. The men put a knife to the neck of the complainant’s daughter in order to frighten him into giving up the gun. Apart from being masked, the intruders carried knives and rods. The men stole property belonging to the business man to a total value of \$31,630.60 and they then fled. Most of the property taken consisted of cash, cheques and jewelry. In an interview under caution this accused freely admitted his role as one of the robbers and admitted taking a chopper to the house and giving it to one of his co-accused.”

- [7] After outlining the facts, the learned Judge referred to the appropriate tariff for robbery with violence and picked 10 years as his starting point. The same starting point was used to sentence the appellant’s co-accused by another judge earlier. The learned judge noted the compelling mitigating factors present in this case. The appellant had a clean record in the last 10 years and he expressed remorse by pleading guilty. The aggravating factors noted by the judge were that this was an armed and a gang home invasion robbery in a rural community.
- [8] After increasing the sentence by three years to reflect the aggravating factors, the learned High Court judge dealt with the mitigating factors in the following manner to arrive at the final sentence:

“8. Of course the greatest mitigating feature in the accused’s favour is his plea of guilty, although not at an early opportunity, which shows his remorse and which greatly saves the Court’s time.

9. From the thirteen years interim sentence, I deduct two years to reflect his quite considerable mitigation brought before this Court. For



his plea of guilty which must receive significant credit and for time he has spent on remand I deduct a further three years meaning that this accused will serve a total of eight years' imprisonment for this offence. Such a sentence reflects the outrage felt by the community by nighttime invasions of domestic properties with perpetrators brandishing weapons. He will serve a minimum term of six years before being eligible for parole."

[9] It is clear that the learned judge dealt with the guilty plea separately and a generous discount was given to all the mitigating factors. The fact that the victims were not physically harmed did not mitigate the offence. The threat of violence was real. Weapons were used to commit a daring home invasion robbery at nighttime. If the victims were physically harmed in the course of the robbery, then the physical injuries would have operated as an aggravating factor to justify a severe sentence. In any case, the final sentence of 8 years' imprisonment is below the range of 10 to 16 years imprisonment for robbery with violence as endorsed by the Supreme Court in *Nawalu* (supra).

[10] I am satisfied there is no merit in the sentence appeal. I am further satisfied that the sentence appeal cannot possibly succeed and is frivolous.

### Result

[11] Extension of time for leave to appeal against sentence is refused. Appeal is dismissed under section 35(2) of the Court of Appeal Act.



At Suva  
15 September 2014

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Hon. Justice D. Goundar  
**JUSTICE OF APPEAL**

### Solicitors:

Office of the Legal Aid Commission for Appellant  
Office of the Director of Public Prosecutions for State