

IN THE COURT OF APPEAL
[On Appeal From The High Court]

CRIMINAL APPEAL NO: AAU0002 of 2012
(High Court Case No: HAC007 of 2012)

BETWEEN : **JONE SAUQAQA**
Appellant

AND : **THE STATE**
Respondent

Coram : Goundar JA

Counsel : Appellant in Person
Ms Prasad for the Respondent

Date of Hearing : 1 April 2014

Date of Ruling : 2 June 2014

RULING

- [1] The appellant was convicted on his own guilty plea to charges of aggravated robbery and theft of a motor vehicle in the High Court at Lautoka. On 14 January 2012 he was sentenced to a total term of ten years' imprisonment with a minimum term of 8 years to serve.
- [2] The facts were that the appellant and his two accomplices hired the vehicle driven by the victim and took him to an isolated location. They assaulted the victim and stole \$35.00 cash and his mobile phone valued at \$250.00. After robbing the victim, they gagged and loaded him into the back seat and drove towards the town. The appellant drove the vehicle. When they realized a police vehicle was chasing them, they abandoned the victim's vehicle and fled the scene. Later they were arrested and charged.

- [3] On 3 January 2012, the appellant was arraigned on the charges in the Magistrates' Court. The appellant pleaded guilty to the charges, and after recording the mitigation, the learned Magistrate transferred the case to the High Court because aggravated robbery was an indictable offence.
- [4] On 16 January 2012, the appellant appeared in the High Court for sentencing. The learned judge adjourned the case to 20 January 2012 for fresh plea on the Information filed by the Director of Public Prosecutions. Fresh plea was taken and the appellant pleaded guilty to the charges and admitted the facts tendered by the prosecution in support of the charges. The learned judge found the pleas were equivocal and convicted the appellant. The appellant tendered a written mitigation and the case was adjourned to 24 January 2012 for sentencing. On 24 January 2012, the appellant was sentenced.
- [5] On the 16 February 2012, the appellant filed a timely appeal against conviction and sentence. His grounds of appeal are that his guilty pleas are equivocal and that his sentence is manifestly harsh and excessive.

Conviction appeal

- [6] Appellate courts entertain appeals against convictions arising from guilty pleas in very exceptional circumstances. If the offender alleges that his plea is equivocal then the evidence of equivocation must appear in the court record. In the present case, the appellant relies on matters that were not part of the court record when the pleas of guilty were entered by the appellant. The appellant refers to his caution interview in which he told the police that he did not participate in the robbery because he was very drunk and was asleep in the vehicle when the victim was robbed. He says that the robbery was committed by his accomplices and he felt responsible for what happened to the victim because the victim was his friend. The appellant further refers to the victim's police statement in which the victim confirms the appellant's version that the appellant was asleep in the vehicle when he was robbed by the appellant's co-accused.

[7] Unfortunately, the appellant's caution interview was not tendered when the appellant entered his guilty pleas. He was unrepresented and the learned judge was obliged to take extra care in ensuring that the appellant's guilty pleas were true admissions of guilt. When the appellant appeared in the Magistrates' Court he was advised of his right to counsel. The appellant indicated that he was going to engage a private counsel. But it appears the appellant was not able to instruct a private counsel due to his incarceration at the remand centre. When the appellant appeared in the High Court, the learned judge did not enquire from the appellant the status of his legal representation. If the appellant had consulted a legal counsel and pleaded guilty, then it would have been more difficult for him to prove his pleas were equivocal. The fact that he was unrepresented and pleaded guilty to the charges in the circumstances that suggest that he may not have been involved in the offence is an arguable issue.

Sentence appeal

[8] The learned judge picked 12 years as his starting point. He added 3 years for the aggravating factors which he identified:

- (i) attack on a career driver
- (ii) late night robbery.

[9] Arguably the fact that the robbery occurred at night was not an aggravating factor.


[10] Five years were deducted from the following mitigating factors:

- (i) guilty pleas;
- (ii) remorse;
- (iii) first offender.

[11] No deduction was made for the 3-week remand period. This is an arguable point.

Result

[12] Leave to appeal against conviction and sentence is granted.

 *[Handwritten signature]*
.....
Hon. Justice D. Goundar
FIJI ISLANDS COURT OF APPEAL