

IN THE COURT OF APPEAL, FIJI  
ON APPEAL FROM THE MAGISTRATES COURT  
*Exercising extended jurisdiction*

CRIMINAL APPEAL AAU 120 of 2017  
(Magistrates Court at Nasinu No.08 of 2016)

BETWEEN : KANITO MATANIGASAU

*Appellant*

AND : THE STATE

*Respondent*

Coram : Calanchini P

Counsel : Mr M Fesaitu for the Appellant  
Ms S Tivao for the Respondent

Date of Hearing : 25 June 2018

Date of Ruling : 3 July 2018

RULING

[1] The appellant and one other (Petero Seniceva) were convicted on their pleas of guilty on one count of aggravated robbery by the Magistrates Court at Nasinu exercising

jurisdiction extended by the High Court. On 27 October 2016 the appellant was sentenced to a term of imprisonment of 3 years 9 months. The sentence was ordered to be served concurrently with sentences imposed on the same day in respect of other offences to which the appellant had pleaded guilty in separate proceedings in the same Court. The co-accused was sentenced to a term of imprisonment of 3 years 5 months to be served concurrently with a sentence imposed on the same day in the same court in respect of separate proceedings.

- [2] By a handwritten letter dated 21 July 2017 the appellant applied for leave to appeal against sentence. The appeal has been filed late and is out of time by about 8 months. Ordinarily it would be necessary to consider whether an enlargement of time should be granted in accordance with the decision of the Supreme Court in **Kumar and Sinu –v- The State** [2012] FJSC 17; CAV 1 of 2009, 21 August 2012.
- [3] However the appellant's appeal against sentence is based on the fact that he was a juvenile at the time of his having committed the offence. Under those circumstances it is appropriate to determine whether the appeal is likely to succeed in order to allow a hearing before the Full Court.
- [4] It is apparent from the sentencing decision that the appellant was sentenced on the basis that he was already over 18 years old. He turned 18 on 28 July 2016 and was sentenced on 27 October 2016. However his birth certificate states that he was born on 28 July 1998. The offence was committed on 2 March 2016. As a result the appellant was just over 17 years and 7 months old at the time of offending. In section 2 of the Juveniles Act 1973 a juvenile is defined as a person who has not attained the age of 18 years and includes a child and a young person. A young person is a person who has turned 14 but has not reached 18 years.
- [5] Under these definitions the appellant was a young person at the time the offence was committed. Under section 30(2) of the Juveniles Act a young person shall not be ordered to be imprisoned for more than 2 years for any offence. It stands to reason then that the

appellant could not have been sentenced to a term of imprisonment of more than 2 years. The sentence passed of 3 years and 9 months represents a ground of appeal that is likely to succeed since the appellant is entitled to be sentenced to the less severe sentence that applied to him as juvenile at the time the offence was committed. An enlargement of time to appeal sentence is granted.

[6] Under the circumstances the court is prepared to consider an application for bail pending appeal which should be filed by the Legal Aid Commission on behalf of the appellant.

Orders:

1. *Application for enlargement of time is granted.*
2. *Leave to appeal against sentence is granted.*
3. *Appellant is to file and serve an application for bail pending appeal no later than Friday 6 July 2018.*
4. *The application is listed for oral argument on Friday 13 July 2018 at 12.00p.m.*
5. *The appeal record is to be filed by 31 July 2018.*
6. *The appeal is to be listed for callover on 6 August 2018 for fixture in the September session of the Court.*



*W. Calanchini*

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Hon Mr Justice W. D. Calanchini  
**PRESIDENT, COURT OF APPEAL**