

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

**CRIMINAL APPEAL NO. AAU 96 OF 2016**  
**WITH AAU 184 OF 2016**  
**(High Court HAC 316 of 2014))**  
**(Magistrates Court No: 1456 of 2014 at Nasinu)**

**BETWEEN** : **MANOA TABUALUMI** *Appellant*

**AND** : **THE STATE** *Respondent*

**Coram** : **Calanchini P**

**Counsel** : **Mr N Tuifagalele for the Appellant**  
**Mr S Vodokisolomone for the Respondent**

**Date of Hearing** : **24 January 2019**

**Date of Ruling** : **22 February 2019**

**RULING**

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

extended jurisdiction. On 20 May 2016 the appellant and the co-offender were both sentenced to terms of imprisonment of 8 years with non-parole terms of 5 years.

- [2] This is the appellant's application for leave to appeal against sentence pursuant to section 21(1)(c) of the Court of Appeal Act 1949 (the Act). Although about 1 month out of time the respondent conceded that time was not an issue in this application. Section 35(1) of the Act gives a judge of the Court of Appeal power to grant leave. The test for granting leave to appeal against sentence is whether there is an arguable error in the exercise of the sentencing discretion: Naisua v The State [2013] FJSC 14; CAV 10 of 2013, 20 November 2013.
- [3] The grounds of appeal are expressed in the form of a number of issues that are discussed in the written submissions filed by both the appellant and the respondent. However during the course of his oral submissions Counsel for the appellant addressed the Court on the mitigating factors of an early guilty plea and the good character of the appellant.
- [4] In his sentencing decision the learned Magistrate noted that the appellant was a 24 year old first offender. The Magistrate noted that there appeared to be some genuine indication of remorse. For those factors the Magistrate allowed a discount of 2 years from the sentence of 11 years which had been calculated on the basis of a starting point of 8 years plus 3 years for aggravating factors.
- [5] The sentence then stood at 9 years imprisonment from which the Magistrate deducted a further 1 year for the appellant's early guilty plea. It was not disputed by the Respondent that the appellant had confessed in his caution interview and had also indicated at the earliest opportunity his intention to plead guilty. It is arguable that under those circumstances there has been an error in the sentencing discretion. There is sufficient authority for the proposition that a discount of possibly up to one third should be considered for early guilty pleas (see: Rainima -v- The State [2015] FJCA 17; AAU 22 of 2012, 27 February 2015).

[6] This offence involved group offending at night whereby a taxi driver was assaulted during the course of the theft of \$200.00. Although serious in itself it does not fall into the same category as a night time group invasion of a home whilst the occupants (usually a family) are asleep. Although the head sentence imposed on the appellant in this case is at the lower end of the tariff, the arguable error is sufficiently significant to grant leave to the appellant to appeal sentence.

Order:

*Leave to appeal against sentence is granted.*



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