

IN THE COURT OF APPEAL, FIJI
ON APPEAL FROM THE HIGH COURT OF FIJI

CRIMINAL APPEAL NO. AAU 162 OF 2016
(High Court HAC 223 of 2012)

BETWEEN : ABELE VAKATAWABAI *Appellant*

AND : THE STATE *Respondent*

Coram : Calanchini P
Chandra JA

Counsel : Mr M Fesaitu for the Appellant
Mr S Shah for the Respondent

Date of Hearing : 23 May 2019

Date of Ruling : 27 June 2019

RULING

Calanchini P

- [1] The appellant was convicted by the High Court at Suva on one count of rape of a child under the age of 13. On 25 February 2014 the appellant was sentenced to 13 years imprisonment with a non-parole term of 10 years.

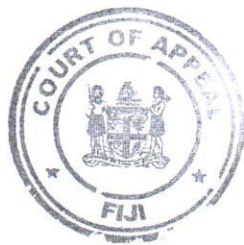
- [2] The Appellant subsequently filed a notice of appeal against sentence that was out of time by about 2½ years. On 20 March 2019 the Appellant filed an application to abandon his appeal against sentence pursuant to Rule 39 of the Court of Appeal Rules.
- [3] In accordance with the decision of the Supreme Court in **Masirewa –v- The State** (CAV 14 of 2008; 17 August 2010) the application to abandon the appeal was listed for hearing before the Court of Appeal. At the hearing the appellant confirmed that his decision to abandon the appeal was made voluntarily. Although he had not received legal advice he confirmed that he understood the consequences in the event that his application were granted. He also acknowledged that there was seven years remaining on his sentence.
- [4] Under the circumstances the application to abandon the appeal against sentence should be granted and the appeal dismissed.

Chandra JA

- [5] I agree.

Order:

Appeal against sentence is dismissed.



W. Calanchini

Hon Mr Justice W D Calanchini
PRESIDENT, COURT OF APPEAL

S. Chandra

Hon Mr Justice S Chandra
JUSTICE OF APPEAL