

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

CRIMINAL APPEAL NO. AAU 12 OF 2011
(High Court HAC 112 of 2009)

BETWEEN : **HARVEY BRYSON** *Appellant*

AND : **THE STATE** *Respondent*

Coram : **Calanchini P**
Chandra JA

Counsel : **Mr M Fesaitu for the Appellant**
Ms W Elo for the Respondent

Date of Hearing : **2 October 2019**

Date of Ruling : **25 October 2019**

RULING

Calanchini P

[1] Following a trial in the High Court at Suva the appellant was convicted on one count of indecent assault on a female, two counts of rape and one count of unnatural offence. On 10 September 2009 he was sentenced to terms of imprisonment of 3 years for indecent

assault, 15 years on each rape count and 11 years for unnatural offence. The sentences were ordered to be served concurrently.

- [2] The Appellant subsequently filed a notice of appeal against conviction and sentence that was out of time by about 5 months. However the notice itself was dated 8 October 2010 and therefore regarded as timely. On 1 April 2019 the Appellant filed an application to abandon his appeal against conviction and 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. He confirmed that he had received legal advice and that he understood the consequences in the event that his application were granted.
- [4] Under the circumstances the application to abandon the appeal against conviction and sentence is granted and the appeal is dismissed.

Chandra JA

- [5] I agree.

Order:

Appeal against conviction and 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