

IN THE HIGH COURT OF FIJI
AT SUVA
[CRIMINAL JURISDICTION]

CRIMINAL CASE NO: HAC 102 of 2019

STATE

V

ULAIASI TONI JUNIOR

Counsel : Ms. Unaisi Tamanikaiyaroi for the State
Ms. Lavinia David for the Accused

Sentence Hearing : 18 October 2019

Date of Sentence : 4 November 2019

SENTENCE

[1] As per the Information, Ulaiasi Toni Junior, you were charged with the following offence:

[COUNT 1]

Statement of Offence

AGGRAVATED ROBBERY: Contrary to Sections 311 (1) (a) of the Crimes Act 2009.

Particulars of Offence

ULAIASI TONI JUNIOR, in the company of others, on the 8th day of May 2019, at Nasinu, in the Central Division, committed theft of \$600.00 cash and assorted Recharge Cards belonging to YEE YONG YOUNG, and immediately before committing theft, used force on YEE YONG YOUNG.

- [2] The Director of Public Prosecutions (DPP) filed the Disclosures relevant to the case on 25 April 2019; and the Information on 16 May 2019.
- [3] When the matter came up before me on 30 May 2019, you were ready to take your plea. You pleaded guilty to the one count in the Information. This Court was satisfied that you pleaded guilty on your own free will and free from any influence. Court found that you fully understood the nature of the charge against you and the consequences of your plea.
- [4] Thereafter, on 17 July 2019, the Summary of Facts were read out and explained to you and you understood and agreed to the same. Accordingly, Court found your guilty plea to be unequivocal. I found that the facts support all elements of the count of Aggravated Robbery in the Information, and found the charge proved on the Summary of Facts agreed by you. Accordingly, I found you guilty on your own plea and I convicted you of the count as charged.
- [5] I now proceed to pass sentence on you.
- [6] The Summary of Facts filed by the State was as follows:

"The Accused

ULAIASI TONI JUNIOR – 20 years of age, unemployed of Nadera.

The Complainant

YEE YONG – 53 years of age, Shop Owner of 64 Tiri Road, Nadawa.

1. *On or about 8th March 2019, at 11.00 p.m., the complainant was closing up her shop namely "Choong Wue Ho Jitua" when suddenly the accused with others appeared.*
2. *The complainant also at the same time noticed 4 other unknown i-taukei males and because she saw one of them carrying a cane knife she ran outside of the shop in fear. The complainant did not see what the robbers stole as she was covering herself at the corner of the shop.*
3. *After the robbers fled from the complainants shop, she went to check what had been stolen and found that \$600.00 cash and Recharge Cards worth \$400.00 was missing. The matter was then reported to Police at Valelevu*

Police Station. On 13th March 2019, police recovered \$47.00 worth of Recharge Cards and showed the complainant the same which were positively identified by the complainant as the same recharge cards stolen from her shop.

4. The accused was interviewed under caution on 12th March 2019 at Raiwaqa Police Station by DC 3835 Wili Naqura Buka. Upon having the allegations put to him, he made full admissions to going to rob the shop (Q & A70) running through the main door of the shop (Q & A 73), going to the till to collect the money (Q & A 77 – 78), stealing recharge cards (Q & A 80), running out of the shop (Q & A 96) and going to Visako Circle to the house of one Kini where they shared what they had stolen (Q & A 102)

[A copy of the Record of Interview of the Accuses is annexed as A1].

- [7] Ulaiasi you have admitted to the above Summary of Facts and taken full responsibility for your actions. You have submitted that you were pressurized by the co-accused, who were not arrested or charged in this matter, in committing this crime.
- [8] Section 4 of the Sentencing and Penalties Act No. 42 of 2009 (“Sentencing and Penalties Act”) stipulates the relevant factors that a Court should take into account during the sentencing process. I have duly considered these factors in determining the sentence to be imposed on you.
- [9] In terms of Section 311 (1) of the Crimes Act No. 44 of 2009 (Crimes Act), “A person commits an indictable offence (of Aggravated Robbery) if he or she-
- (a) Commits a robbery in company with one or more other persons; or
 - (b)

The offence of ‘Robbery’ is defined at Section 310 (1) of the Crimes Act as follows:

“A person commits an indictable offence (which is triable summarily) if he or she commits theft and —

(a) immediately before committing theft, he or she —

(i) uses force on another person; or

(ii) threatens to use force then and there on another person —

with intent to commit theft or to escape from the scene; or

(b) at the time of committing theft, or immediately after committing theft, he or she—

(i) uses force on another person; or

(ii) threatens to use force then and there on another person—

with intent to commit theft or to escape from the scene”.

[10] The offence of Aggravated Robbery in terms of Section 311 (1) of the Crimes Act carries a maximum penalty of 20 years imprisonment.

[11] The tariff for the offence of Aggravated Robbery is between 8 and 16 years imprisonment. This tariff has been endorsed by the Supreme Court in **Wallace Wise v. State** [2015] FJSC 7; CAV 04 of 2015 (24 April 2015); where it was held:

“.....We believe that offences of this nature should fall within the range of 8-16 years imprisonment. Each case will depend on its own peculiar facts. But this is not simply a case of robbery, but one of aggravated robbery. The circumstances charged are either that the robbery was committed in company with one or more other persons, sometimes in a gang, or where the robbers carry out their crime when they have a weapon with them.”

[12] However, in **State v. Josaia Warodo Vatunicoko** [2018] FJHC 885; HAC210.2018 (21 September 2018); His Lordship Justice Goundar summarised the various tariffs for the offence of Aggravated Robbery depending on the nature and circumstances of the robbery in the following manner:

“In assessing the objective seriousness of your offending, I am mindful that aggravated robbery in the company of others is punishable by 20 years’ imprisonment. The tariff depends on the nature and circumstances of the robbery. The tariff is as follows:

*Street mugging: 18 months to 5 years’ imprisonment (**Raqaquau v. State** [2008] FJCA 34; AAU0100.2007 (4 August 2008).*

*Home invasion: 8 – 16 years’ imprisonment (**Wise v. State** [2015] FJSC 7; CAV0004.2015 (24 April 2015).*

*A spate of robberies: 10 -16 years’ imprisonment (**Nawalu v. State** [2013] FJSC 11; CAV0012.12 (28 August 2013).”*

[13] In this case you have been convicted of entering the commercial property belonging to the complainant, in the company of others. Therefore, in my opinion, the appropriate tariff in the instant case, should be between 8 and 16 years’ imprisonment (as decided in **Wallace Wise v. State** (*supra*)).

[14] In determining the starting point within a tariff, the Court of Appeal, in *Laisiasa Korovuki v State* [2013] FJCA 15; AAU 0018 of 2010 (5 March 2013); has formulated the following guiding principles:

"In selecting a starting point, the court must have regard to an objective seriousness of the offence. No reference should be made to the mitigating and aggravating factors at this time. As a matter of good practice, the starting point should be picked from the lower or middle range of the tariff. After adjusting for the mitigating and aggravating factors, the final term should fall within the tariff. If the final term falls either below or higher than the tariff, then the sentencing court should provide reasons why the sentence is outside the range."

[15] In the light of the above guiding principles, and taking into consideration the objective seriousness of the offence, including the maximum sentence prescribed for the offence, the nature and gravity of the offence and the degree of culpability, Ulaiasi, I commence your sentence at 8 years' imprisonment for the offence of Aggravated Robbery.

[16] The aggravating factors are as follows:

- (i) The frequent prevalence of these offences in our society today.
- (ii) You paid scant regard to the safety and security of the complainant, who was engaged in her employment at her business premises.
- (iii) You committed this offence in the late hours of the night.

[17] Ulaiasi, in mitigation, you have submitted as follows:


- (i) You have fully cooperated with the Police when you were taken in for questioning and subsequently charged instead of trying to circumvent the course of justice.
- (ii) You have sought forgiveness from this court and have assured that you will not re-offend. You have submitted that you are truly remorseful of your actions.
- (iii) That you have entered a guilty plea at the first available opportunity.

[18] Ulaiasi, you are 20 years of age [Date of Birth 16 February 1999]. You are said to residing at Davulu Road, Nadera with your grandparents and younger siblings. Prior to the offending, you were said to be employed as a Delivery Boy at Aqua Safe, Suva. However, it is the opinion of this Court that these are personal circumstances and cannot be considered as mitigating circumstances.

- [19] Considering the aforementioned aggravating factors, Ulaiasi, I increase your sentence by a further 2 years. Now your sentence for the offence would be 10 years imprisonment.
- [20] Ulaiasi, I find that you have one previous conviction recorded against you, which was also for property offences, namely Aggravated Burglary and Theft, committed during the period 24 December 2017- 10 January 2018. For the said offences, you were convicted and sentenced by the Suva High Court, on 16 July 2019, to 3 years imprisonment, which term was suspended for 5 years. Therefore, I cannot consider you to be a person of previous good character.
- [21] However, I accept that you have fully co-operated with the Police in this matter. I also accept your remorse as genuine. Accordingly, considering these mitigating factors, I deduct 2 years from your sentence. Now your sentence would be 8 year's imprisonment.
- [22] Ulaiasi, I accept that you entered a guilty plea in this case at the first available opportunity. In doing so, you saved precious time and resources of this Court. For your early guilty plea I grant you a further discount of 32 months. Now your final sentence would be 5 years' and four months imprisonment.
- [23] Accordingly, Ulaiasi I sentence you to a term of 5 years' and four months imprisonment.
- [24] However, since you are only 20 years of age and as such a young offender, and also since you have given an undertaking to this Court that you will not re-offend in the future, it is my opinion that the chances for your rehabilitation is high. Therefore, pursuant to the provisions of Section 18 (2) of the Sentencing and Penalties Act, I will not impose or fix a non-parole period to be served by you.
- [25] Section 24 of the Sentencing and Penalties Act reads thus:
- "If an offender is sentenced to a term of imprisonment, any period of time during which the offender was held in custody prior to the trial of the matter or matters shall, unless a court otherwise orders, be regarded by the court as a period of imprisonment already served by the offender."*
- [26] Ulaiasi, you have been in custody for this case since your arrest on 12 March 2019. This is approximately 8 months. The period you were in custody shall be regarded as period of imprisonment already served by you. I hold that the period of 8 months should be considered as served in terms of the provisions of Section 24 of the Sentencing and Penalties Act.

[27] In the result, Ulaiasi, you are sentenced to a term of 5 years' and four months imprisonment. Considering the time you have spent in remand, the time remaining to be served by you would be 4 years' and eight months imprisonment.

[28] You have 30 days to appeal to the Court of Appeal if you so wish.


Riyaz Hamza
JUDGE
HIGH COURT OF FIJI



AT SUVA

Dated this 4th Day of November 2019

Solicitors for the State : Office of the Director of Public Prosecutions, Suva.
Solicitors for the Accused : Office of the Legal Aid Commission, Suva.