

IN THE HIGH COURT OF FIJI
AT SUVA
CRIMINAL JURISDICTION

Crim. Case No: HAC 225 of 2022

BETWEEN: **STATE**

PROSECUTION

A N D: **EPIRONI NAISUINIMATA**

ACCUSED PERSON

Counsel: Ms. P. Mishra for the State
 Mr. J. Buakula for Accused

Date of Sentence: 15th September 2022

SENTENCE

1. Mr. Epironi Naisuinimata, you pleaded guilty to one count of Attempted Aggravated Robbery, contrary to Section 44 (1) and 311 (1) (a) of the Crimes Act, which carries a maximum penalty of life imprisonment. The particulars of the offence are:

COUNT 1

Statement of Offence

ATTEMPTED AGGRAVATED ROBBERY: *Contrary to Section 44 (1) and 311 (1) (a) of the Crimes Act 2009.*

Particulars of Offence

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EPIRONI NAISUINIMATA with another, on the 24th day of June, 2022, at Cunningham in the Central Division, in company of each other attempted to rob one ILAITIA NAINOCA and immediately before attempting to rob the said ILAITIA NAINOCA, used force on him.

2. Satisfied that you have fully comprehended the legal effect of your plea and that your plea was voluntary and free from influence, I now convict you of Attempted Aggravated Robbery.

3. According to the Summary of Facts you admitted in Court, you and your accomplice had attempted to rob the Complainant when he was walking along Cunningham Road in the early evening of the 24th of June 2022. You approached the Complainant and punched his face, yet, the Complainant kept walking. You then pulled him down and kicked him in his face while your accomplice tried stealing the Complainant's phone. One of your neighbours had witnessed this incident and called out your name, asking what you were doing. You and your accomplice then abandoned your criminal enterprise and fled the scene. As per the Medical Examination Report, the Complainant had sustained the following injuries:
 - a) *Left eye-laceration noted 0.5cm;*
 - b) *Not actively bleeding;*
 - c) *Swelling noted at left eyebrow;*
 - d) *Swelling noted around eyes;*
 - e) *Pupils 2mm bilaterally;*
 - f) *Abrasions + swelling noted around nose area (as per the medical report).*

4. You and your accomplice had attempted to rob the Complainant while he was in a public place. This is a crime of street mugging or a less sophisticated form of aggravated robbery. Crimes of this nature are prevalent and have created insecurity and vulnerability in society. Therefore, I find this is a serious offence.

5. Because of the seriousness of this offence, it is my opinion that such offenders must be dealt with severe and harsh punishment. Therefore, the purpose of this sentence is founded on the principle of deterrence and protection of the community.
6. The Summary of Facts does not reveal that the Complainant had suffered any permanent or grievous injuries besides the injuries recorded in the Medical Examination Report. Hence, I find the level of harm falls within the medium range. Two offenders carried out this offence without any offensive weapons. Accordingly, the starting point is five (5) years imprisonment, and the sentencing range is three (3) to seven (7) years imprisonment. **(State v Tawake [2022] FJSC 22; CAV0025.2019 (28 April 2022))**
7. You carried out this offence at night on a public road. The Complainant was walking along the street, hence, were not in a position to escape or overpower the aggression of you and your accomplice. I find these facts as aggravating factors of this offence.
8. You are 27 years old and a first offender. Hence, you are entitled to a discount for your previous good character. Moreover, showing your remorse, you pleaded guilty to this offence at the first opportunity. Therefore, you are entitled to a further discount for your early plea of guilty.
9. Considering the above-discussed aggravating factors, I increase one (1) year, reaching an interim sentence of six (6) years. I deduct one (1) year for your previous good character and a further two (2) years for your early plea. Accordingly, your final sentence is three (3) years imprisonment.
10. Having considered the seriousness of this crime, the purpose of this sentence, your age, and opportunities for rehabilitation, I find one (1) year of the non-parole period would serve the purpose of this sentence. Hence, you are not eligible for parole for one (1) year.
11. Given the seriousness of this crime, the level of harm, the culpability, and the purpose of the sentence, I do not find this is an appropriate case to suspend the sentence.

Head Sentence

12. Accordingly, I sentence you to a period of three **(3) years** imprisonment for the offence as charged. Moreover, you are not eligible for parole for **one (1) year** pursuant to Section 18 of the Sentencing and Penalties Act.

Actual Period of Sentence

13. You have been in remand custody for this case for nearly two (2) months and eighteen (18) days. Pursuant to Section 24 of the Sentencing and Penalties Act, I consider three (3) months as a period of imprisonment you have already served.
14. Accordingly, your actual sentencing period is two **(2) years** and **nine (9) months** of imprisonment period, with **nine (9) months** of non-parole period.
15. Thirty (30) days to appeal to the Fiji Court of Appeal.



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Hon. Mr. Justice R.D.R.T. Rajasinghe

At Suva

15th September 2022

Solicitors

Office of the Director of Public Prosecutions for the State.
Office of the Legal Aid Commission for the Accused.