

IN THE HIGH COURT OF FIJI
AT LABASA
CRIMINAL JURISDICTION

Criminal Case No. HAC 16 of 2024

The State

-v-

- 1. AM**
- 2. SB**

Counsel: Mr. T. Tuenuku for the State
Mr. I. Rusaqoli for AM
Ms. K. Marama with Mr. W. Lomaloma for SB

Date of Judgment: 11 April 2025
Sentencing Hearing: 29 May 2025
Date of Sentence: 13 June 2025

SENTENCE

(As AM was a child at the date of offending and SB is his brother, their full names are suppressed. In these sentencing remarks, I shall refer to them as Akuila and Sairusi respectively.)

- 1. Akuila and Sairusi**, you were both found guilty after trial before this Court of a single joint count of aggravated robbery.
2. In the early hours of 22 January 2024, as he walked down the street near to your home, you punched Mr. Prasant Praneel Chand and robbed him of his Samsung Galaxy A03 mobile phone. Mr. Chand suffered injuries requiring medical attention.
3. To assist me in deciding on the most appropriate way of dealing with you, I requested the Social Welfare Department to prepare background reports, and I am pleased that you both fully cooperated in the preparation of those reports, which are favourable to you.

Pre-sentencing Reports

4. **Akuila**, you have recently turned 18 years of age, and were a 16-year-old child when you robbed Mr. Chand.
5. Your pre-sentencing report was prepared by Mr. Tawake who informs me that you left school in Class 8 to work to support your family who were struggling financially.
6. You are currently working as a casual labourer in a construction company in Labasa and continue to support your family.
7. You have expressed remorse for your offending and have shown a degree of insight.
8. Mr. Tawake assesses that you are a low risk to the community and considers that you may be appropriately dealt with under the Community-Based Corrections Act.
9. **Sairusi**, you are now 22 years of age, and were just shy of your 21st birthday when you robbed Mr. Chand.
10. Your pre-sentencing report was also prepared by Mr Tawake.
11. You maintained throughout your interview with Mr. Tawake that you are innocent and were *“at the wrong place at the wrong time”*. You feel *“victimized”*.
12. Notwithstanding your attitude to your offending, Mr. Tawake recommends that the Court deals with you leniently under the Community-Based Corrections Act in order to promote your rehabilitation.

Prosecution Sentencing Submissions

13. The prosecution has filed written sentencing submissions setting out the current sentencing practice for adult offenders for what it considers to be *“a classic street mugging case”*. Based on this current practice, the prosecution assess that the level of harm is low, and submits that the starting point for Sairusi's sentence is 3 years' imprisonment, with a sentencing range of 1 to 5 years' imprisonment.

14. The prosecution has quite properly drawn my attention to the provisions of the Juveniles Act, which dictates a different approach to the punishment of children in conflict with the law.
15. The prosecution submit that the offending in this case is made more serious by the fact that it involved a degree of planning and was committed during the hours of darkness.
16. Sairusi is a repeat offender, having pleaded guilty to aggravated burglary and theft in 2021. He was sentenced to 18 months' imprisonment suspended for 2 years.

Defence Sentencing Submissions

17. **Akuila**, your lawyer has filed helpful written submissions on your behalf. It is submitted that your offending is made less serious because it was unplanned and because you are a young first offender whose lack of maturity reduces your culpability. Mr. Rosaqoli urges that you be given a chance of rehabilitation and requests that you be released on a good behaviour bond, and that no conviction be recorded.
18. **Sairusi**, your lawyer has also filed helpful written submissions urging me to deal with you leniently in order to help your rehabilitation. You are a young offender in a *de-facto* relationship and you have a 1-year-old daughter.
19. Ms. Marama reminds me that a sentencing court must not impose a more serious sentence unless it is satisfied that a lesser sentence will not meet the statutory objectives of sentencing, and sentences of imprisonment should be regarded as the sanction of last resort. She urges me to consider imposing a community work order or, alternatively, a wholly suspended sentence.

Analysis and disposal

20. Aggravated robbery is a serious offence which is reflected in the maximum sentence of 20 years' imprisonment. It can have significant psychological, emotional and financial effects on victims. Law-abiding members of the public ought to be able to walk the streets at night without fear of being mugged.

21. To reflect the seriousness of the offence of aggravated robbery, adult offenders are generally given a prison sentence, albeit such sentences are often suspended in the case of young first offenders.
22. However, it is now well-established that the approach to children in conflict with the law should be different from that of adult offenders. The primary objective of any order of the court is not punishment. Rather, the objective is to help the child to correct his behavior and become a productive, law-abiding member of society.
23. There is also a growing acceptance that these objectives can properly be extended to young adult offenders. It is now well-established by case law that the young age and/or lack of maturity of an offender do not cease to have any relevance on his or her 18th birthday. Full maturity and all the attributes of adulthood are not magically conferred on young people on their 18th birthdays. Experience of life reflected in scientific research is that young people continue to mature, albeit at different rates, for some time beyond their 18th birthdays. The youth and maturity of an offender continue to be factors that inform any sentencing decision even if an offender has passed his or her 18th birthday.
24. In this case, Sairusi was considerably older than Akuila at the date of offending, albeit he was still a young man of 20 years. I consider that their lack of maturity played a large part in their poor decision making.
25. Nevertheless, in my view, Sairusi is more culpable than Akuila, not least because he sought to shift all the responsibility for their disgraceful behaviour onto his younger brother.
26. Sentencing courts now have available a range of orders introduced by the Community-Based Corrections Act 2018, the principal objective of which is to (a) provide the courts with a range of sentencing options and the means of dealing with offenders, other than by imprisonment; (b) establish conditions so that the rehabilitation of offenders may be promoted; and (c) reducing reoffending by managing the rehabilitation of offenders and their reintegration into society.

27. Given that Akuila is considered suitable for a community-based corrections order, I have decided that this is the most appropriate way of dealing with him.
28. Akuila clearly has a good work ethic, and I have formed the view that he has very good prospects of becoming a productive, law-abiding member of society, and that a community-based corrections order is the best way to promote that goal.
29. It is important to avoid criminalising children and young adults unnecessarily. To that end, having taken into consideration all the circumstances of the offence and the potential implications for Akuila, I have decided that the Order I make is **without recording a conviction**. I note in this regard that convictions are not, in any event, entered against offenders under the age of 18 years.
30. **Akuila**, I hope that you have been able to understand why I have decided to deal with you by imposing a community-based corrections order.
31. A copy of the Order will be provided to you so that you can read and understand it in your own time.
32. The Order requires you to comply with all the conditions I have imposed for a period of **1 year**, and during that time you must comply with every reasonable direction of the supervising officer.
33. If you are not able to comply with these conditions you may apply to court and the court may deal with you in a different way.
34. You may also be brought back to court and be dealt with in a different way if you fail to comply with any of the conditions I have imposed.
35. I want to know how you get on during the Order, and that is why I have ordered the community-based corrections officer to send me a progress report after 6 months. I would be really pleased to hear that you are keeping out of trouble and showing that you can be a good citizen.
36. **Sairusi**, your refusal to accept responsibility for your offending does not bode well for your rehabilitation.

37. Whilst I accept that your immaturity played a role in your offending, as the elder brother you should have known better.
38. You have already served a suspended prison sentence for offences of dishonesty and, having regard to all the circumstances of your offending, I cannot go along with the recommendation that I impose a community-based order.
39. In my judgement, only a sentence of imprisonment would meet the objectives of sentencing set out in the Sentencing and Penalties Act 2009.
40. The appropriate starting point is 3 years' imprisonment. In my view, the aggravating and mitigating factors balance out, which means that the appropriate sentence is one of 3 years' imprisonment.
41. You spent just shy of 3 months on remand before you were bailed. Having regard to that period, your sentence is 2 years' 9 months' imprisonment.
42. That is a sentence that enables me to consider whether it would be appropriate to suspend your sentence.
43. By a very fine margin, I have decided that suspension is justified. You are not a hardened criminal, and I feel sure that you have no wish to repeat the experience of your period in custody on remand. You are now in a stable relationship and have the responsibilities of parenthood, which I believe will incentivise you to become a productive and law-abiding citizen.
44. You should be in no doubt, however, that this is the last chance saloon for you.
45. **Sairusi**, for the reasons that I have explained, I sentence you to 2 years' 9 months' imprisonment suspended for 3 years.
46. In the event if at any time during the next 3 years you commit another offence punishable by imprisonment and are charged under section 28 of the Sentencing and Penalties Act 2009, if convicted, the court may impose a fine, and must restore the sentence that I have imposed today unless exceptional circumstances make this unjust.

47. 30 days to appeal to the Court of Appeal.




Hon. Mr. Justice Burney

At Labasa
13 June 2025

Solicitors
Office of the Director of Public Prosecutions for the State
Office of the Legal Aid Commission for the Juveniles