

IN THE COURT OF APPEAL OF TONGA

CRIMINAL JURISDICTION

AC 4 of 2018

NUKU'ALOFA REGISTRY

[CR208 of 2008]

BETWEEN: SAMUELA 'ALATINI

- Appellant

AND : R E X

- Respondent

**Coram : Handley J
Blanchard J
Hansen J**

**Counsel : Mr. S. Fili for the Appellant
Mr. 'A. Kefu SC for the Respondent**

Date of Hearing : 21 March 2018

Date of Judgment : 26 March 2018

JUDGMENT OF THE COURT

- [1] In 2008 the appellant pleaded guilty to charges of robbery, armed robbery and conspiracy to commit armed robbery, causing grievous bodily harm and various firearms charges. He was sentenced by Ford CJ to a term of 15 years imprisonment. A suspended sentence of three years was activated. He was accordingly required to serve a total term of 18 years imprisonment.
- [2] On 9 February 2018 the Lord Chief Justice granted the appellant leave to appeal out of time.

Facts

- [3] The robbery took place on 20 March 2008. The appellant and an associate, 'Opeti Fekau, followed the victim's vehicle until it stopped at a shop. Both were disguised. The appellant went to the driver's side of the care, threw the victim out and got into the driver's seat. Fekau got into the front passenger's seat. They drove off with a bag containing cash of \$6,000, recharge cards to the value of \$1,000 and a digital camera valued at \$400 which had been on the back seat.
- [4] The armed robbery took place on 26 May 2008. The appellant, Fekau and three others, Lei'ataua Foliaki, Pita Latu and the appellant's brother Tevita 'Alatini, rented a car. They changed its appearance the day before the robbery by tinting the windows, changing the licence plate and covering the back window. The following day all except Tevita 'Alatini went in the car and parked

near a Westpac Bank at Kolofo'ou. They saw two people get out of a business vehicle and approach the bank. One, a girl, was holding a handbag. The appellant and 'Opeti Fekau got out of the rental car and accosted the two. Both were disguised. Each carried a shotgun. Fekau attempted to wrench the handbag from the girl. She resisted. A colleague of the victims got out of their vehicle to try and assist them. The appellant fired at him hitting him in the thigh. The girl then let go of the bag. The appellant and Fekau rejoined Foliaki and Latu who had remained sitting in the car. They drove off with the bag which contained approximately \$3,000 and a mobile phone worth \$375. They met up with Tevita 'Alatini and removed the disguise from the car, which was returned the following day by Tevita 'Alatini. They divided the proceeds of the robbery between them.

- [5] All five admitted the offending when interviewed and pleaded guilty after a voir dire which found the statements of Mr. Latu and Tevita 'Alatini to be admissible.

Sentencing

- [6] The appellant was sentenced on a single count of robbery in relation to the March robbery and a total of five charges in relation to the armed robbery. They included charges of possession of firearms and ammunition and of causing grievous bodily harm. Recognising his leading role in the robbery – the Judge described him as the ringleader – and identifying a starting point of 15 years for armed robbery, the Judge said that were it not for his guilty pleas he would have sentenced him to 18 years imprisonment. After credit for his guilty pleas he was sentenced to 15 years on the most serious charges with lesser concurrent sentences on the

remainder. Unfortunately for Mr. 'Alatini he also had the suspended sentence (of 3 years) hanging over his head. His total sentence was thereby restored to 18 years.

[7] In *Foliaki v Rex* [2015] TOCA 12 this Court decided appeals against sentence by two of the Appellant's co-offenders, Lei'ataua Foliaki and Pita Latu. In the judgment we reviewed the sentences imposed on all five. For the purpose of this appeal it is unnecessary to repeat this exercise. It is sufficient to refer to the issue of key concern which led this Court to allow the appeals and was the focus of attention at the hearing of this appeal.

[8] The sentencing Judge adopted a starting point of 15 years imprisonment as the lead sentence for the most serious offending, the armed robbery in which all offenders participated. After reviewing relevant sentencing decisions since 1999 this Court came to the view that 15 years was much too high. The Court concluded that a starting point of ten years was appropriate having regard to the aggravating features including the level of premeditation as evidenced by the elaborate preparations made and the use of disguises; the targeting of vulnerable victims; the deployment of firearms and the actual violence inflicted.

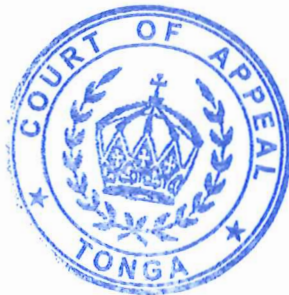
This appeal

[9] Accepting a starting point of ten years imprisonment for the armed robbery, leads inevitably to the conclusion that the starting point – effectively 18 years – adopted for the totality of the offending was far too high. We accept Mr. Kefu's assessment that an additional three years, leading to a starting point of 13 years, adequately captures the totality of the appellant's offending.

- [10] That starting point must be reduced to reflect the appellant's guilty plea. Although it was not entered at the earliest opportunity we accept, as the Court did in Foliaki, that a 25% discount is appropriate. A sentence of 9 years 9 months results.
- [11] There was and could be no issue taken with the Judge activating the suspended sentence. That leads to an overall sentence of 12 years 9 months.
- [12] There was, however, an important oversight by the sentencing Judge which needs to be corrected. He failed to record that the sentence should take effect from the date the appellant was taken into custody. As a result, the sentence currently runs from the date of sentencing some six months later.

Result

- [13] The appeal is allowed. The sentence of 18 years imprisonment is quashed. In its place we impose a sentence of 12 years and nine months to take effect from the date on which the appellant was taken into custody.



KR Handley
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Handley J

John Blanchard
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Blanchard J

J Hansen
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Hansen J