

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

CRIMINAL APPEAL NO. AAU0017 OF 1998S
 (High Court Criminal Action No.042 of 1997/S)

BETWEEN:

SAILOSI SERUKALOU

Appellant

AND:

THE STATE

Respondent

Coram:

The Hon. Sir Moti Tikaram, President
 The Hon. Justice Gordon Ward, Justice of Appeal
 The Hon. Sir David Tompkins, Justice of Appeal

Hearing:

Wednesday, 25 August 1999, Suva

Counsel:

Appellant in Person
 Ms. R. Olutimayin for the Respondent

Date of Judgment: Friday, 27 August 1999

JUDGMENT OF THE COURT

This is an appeal against a sentence of 5 years imprisonment for manslaughter. The offence was committed on 19 March 1994 but the trial did not take place until April 1998. The appellant pleaded not guilty but changed his plea after the evidence only of the pathologist. He was sentenced on 19 June 1998.

Briefly, the facts were that the deceased, very drunk, was making his way home in the early hours. He passed a group of people which included the appellant who then left his companions and followed the drunken man. The appellant asked for cigarettes and was abused by the deceased. An exchange of blows took place which terminated in two blows to the deceased's face and one to the chest knocking him to the ground. He died from a sub-arachnoid haemorrhage caused either by the blows or the impact when his head hit the ground or possibly both. When arrested, the appellant admitted he had assaulted the deceased with the intention of

robbing him which he did, removing the jersey and wrist watch as the victim lay on the ground.

The learned judge gave the accused credit for his plea of guilty, his relative youth and the fact he had "found religion again," and might be rehabilitated as a result. He considered the proper sentence was one of 6 years imprisonment but reduced it to 5 years for these mitigating factors.

At that time the appellant was serving a total sentence of 3 ½ years imprisonment imposed on 12 March 1998 for two offences of shop breaking and one of robbery with violence. Those offences had all apparently been committed whilst the appellant was on bail for the present offence. As a result the learned judge ordered the 5 years imprisonment be "served concurrently with the terms of imprisonment now being served by you for offences committed subsequently to the present offence."

The appellant, who appeared in person, appeals on the grounds that the sentence was harsh and excessive, the judge failed to consider the mitigating factors, ignored the principle of totality of sentence, was unduly influenced by the appellant's previous convictions and that he should be allowed to leave prison as soon as possible in order to take this "golden opportunity" to live a better life.

He also asked for a sentence concurrent with the sentence he was already serving. However, by that, it appears he was asking for a sentence that would add nothing to the term of imprisonment he was already serving.

At the hearing he tendered further written submissions to the effect that he was not the only person involved. We do not consider that advances the matter.

We have considered his grounds of appeal and we can see no reason to interfere with the sentence. The record of the judge's comments when passing sentence showed he placed considerable weight on the mitigating factors and was well aware of the combined effect of all the sentences the appellant was serving. As a result the effective sentence passed was very much reduced.

Counsel for the respondent pointed out correctly that, as the offences were totally unrelated, the judge would have been justified in ordering the five years to be served consecutively. In such cases appellants must realise that, by appealing such plainly lenient sentences, they place themselves at risk of having the sentences increased by the appeal court.

Appeal dismissed.

Moti Tikaram

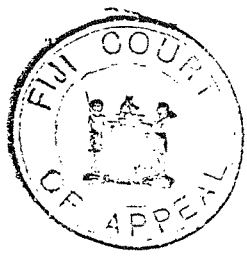
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Sir Moti Tikaram
President

Gordon Ward

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Justice Gordon Ward
Justice of Appeal

David Tompkins

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Sir David Tompkins
Justice of Appeal



Solicitors:

Appellant in Person
Office of the Director of Public Prosecutions, Suva