

IN THE COURT OF APPEAL, FIJI ISLANDS
AT SUVA

CRIMINAL APPEAL NO. AAUOO93 OF 2007

BETWEEN : MESAKE RATABUA *Appellant*

AND : THE STATE *Respondent*

BEFORE THE HONOURABLE JUDGE OF APPEAL, MR JUSTICE
JOHN E. BYRNE

Counsel : Appellant - In Person
: Ms A. Prasad for the Respondent

Date of Hearing: 10th December 2007
& Ruling

R U L I N G

[1] The Appellant seeks Leave to Appeal from a Judgment of Shameem J. in the High Court on the 16th of February 2007 when she upheld an appeal by the Appellant against a term of imprisonment of 5 years imposed by the Magistrate's Court at Nasinu where the Appellant was charged with one count of '*Burglary*', one count of '*Larceny in a Dwelling House*' and '*House Breaking, Entering and Larceny*'. He pleaded guilty to breaking into a house on the 15th of September 2006 by forcing

open a padlock and stealing a Sony Video Camera valued at \$250.00.

- [2] The Appellant admitted the facts and 11 previous convictions most of which were for similar offences.
- [3] In mitigation the Appellant said he was married with one child and employed at Glass & Bearer Building Constructions.
- [4] He submitted to Shameem J. that the total sentence of 5 years imprisonment which the Magistrate imposed was excessive and that the Magistrate failed to consider all the mitigating factors including his plea of guilty and his economic status. The learned Magistrate sentenced the Appellant to 3 years imprisonment on the first two charges to be served concurrently and a consecutive term of two years imprisonment on the third charge.
- [5] The learned Judge said that the Magistrate correctly identified the tariff sentences on each offence and that his approach could not be faulted. However, she said, although the two incidents on which the charges arose were separate, they were only a few days apart and very similar in character. Further, she said, the 3 year term imposed on the first count was at the higher end of the

tariff and correctly reflected the totality of the offending. She therefore considered that the sentences on all three counts should have been ordered to be served concurrently and thus reduced the total 5 year term to 3 years. She said that the Appellant because of his recidivism and habitual offending deserved no further reduction in sentence.

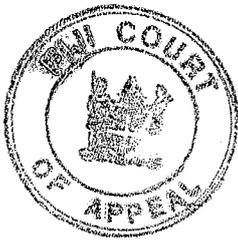
[6] She therefore allowed his appeal.

[7] Before this Court can grant leave to appeal the Appellant must satisfy me that the learned Judge committed some error in law so that leave could then be granted. I am satisfied that the Judge did not commit any such error and took into account all relevant factors concerning the Appellant. I note from his criminal record that he committed various offences of '*Larceny*', '*House Breaking and Entering*', and '*Burglary*' between 1988 and 1992 but then had a break from crime and was not convicted again until March 2003 when he was given two six month concurrent sentences for burglary and larceny in a dwelling house.

[8] Reform

Shameem J. had all these convictions before her and obviously took them into account when deciding to uphold the appeal and reduce the Magistrate's Court sentence from 5 to 3 years. In doing so I consider she was correct and committed no error in law.

[9] For these reasons I refuse to grant Leave to Appeal and make this order under Section 35 of the Court of Appeal Act on the ground that the appeal is bound to fail.



A handwritten signature in cursive script, reading "John E. Byrne", written over a horizontal dotted line.

[John E Byrne]

JUDGE OF APPEAL

At Suva

10th December 2007