

IN THE FIJI COURT OF APPEAL

CRIMINAL JURISDICTION

CRIMINAL APPEAL CASE NO: AAU 0010 OF 2008

BETWEEN

SEINI USA TUIFAGALELE

Applicant

AND

THE STATE

Respondent

Applicant in Person

Ms Andie Driu for the Respondent

Date of Hearing & Judgment: 20 June 2008

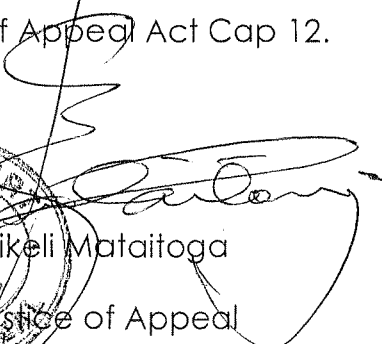

JUDGMENT

1. Seini Tuifagalele, you are the applicant in this matter. This is your application seeking Leave of the court to appeal out of time, from the judgment of Mr. Justice Winter delivered on 22 March 2007 declining your application on that occasion to also appeal out of time against a decision of the Suva Magistrates Court.
2. This matter is before me, for determination in accordance with section 35(1)(b)&(2) of the Court of Appeal Act Cap 12.

Background

3. You were charged with others on one count of Robbery with Violence, contrary to section 293(1) of the Penal Code Cap 17. The particulars of the offence were that you with others on 17 April 2006 at Suva in the Central Division being armed with a pinch bar and cane knives robbed Rathika Kumar d/o Harry Prasad of assorted jewellery valued at \$7,935.00, a Nike Canvas shoe valued at \$114.00 and \$8,554.22 in cash, all to the total value of \$16,603.22.
4. You pleaded guilty to the charge when it was first called in the Magistrate Court on 25 April 2006. The learned magistrate convicted you and after considering your mitigation sentenced you to 5 years imprisonment. You were advised of your right to appeal to the High Court within 28 days. You did not file your appeal in that until 21 December 2006. Your right to appeal as of right had expired on 23 May 2006. Your leave to appeal was late by 7 months on that occasion.
5. Mr. Justice Winter declined your application for to leave to appeal out of time because there were no exceptional circumstances to justify such. As the learned judge observed you had accepted your sentence and you decided not to appeal. However, you received subsequent advise from a fellow inmate and that prompted you to file a late appeal. You had no good cause to show and your application was refused on 22 March 2007.
6. Under section 26(1) of the Court of Appeal Act Cap 12, you had a right to appeal without leave if you had filed your Notice of Appeal within 30 days from the 22 March 2007 i.e. no later than 22 April 2007. You did not file your appeal to this court until 7 months later. Unless you have good cause you will not be granted leave to appeal.
7. Good cause in this context means the following '... the strength of the proposed appeal..the length of the delay and reasons for the delay, the extent of the impact on others similarly affected and on the administration of justice, that is floodgates considerations and the absence of prejudice to the state' ***R v Knight (1995) 15 CRNZ 332***. In addition since this a second appeal, the appeal is limited to issues of law only: ***Ilaisa Sousou v The State [2003] FJCA 41; AAU 0020/2003***.

8. During the leave application hearing I advised the applicant that he must show good cause to be granted leave to appeal out of time. His application for leave was late by 7 months. In all his written submission, the reasons given were inadequate on their own for this court to grant leave. However, the court was willing to grant leave had there been a ground of appeal submitted by the applicant in support of his leave application that had a reasonable prospect of success on appeal.
9. The applicant was sentenced to 5 years imprisonment after conviction for one count of robbery with violence. The robbery itself was carried out with weapons used and a lot of money and property was stolen. On those facts and the basis of the tariff of 4 to 7 years imprisonment for robbery with violence case, authorised by this court in **Sakiusa Basa v The State [2006] FJCA 23; AAU 0024 of 2005**, the sentence passed against the applicant in this case, is lenient in my view.
10. It has not been shown from the grounds submitted to me, that the sentence was passed in consequence of an error in that incorrect principles were applied nor was it argued that the sentencing court took into consideration irrelevant factors: **Kim Nam Bae v The State [1999] FJCA 21; AAU 0015 of 1998**. There were no issues of law raised in the grounds urged upon me in the hearing of this application.
11. The requirements for Leave to Appeal out of time have not been satisfied. The applicant's leave application is declined and is dismissed under section 35(3) of the Court of Appeal Act Cap 12.



Isikeli Maitaitoga
Justice of Appeal

At Suva

20 June 2007