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IN THE COURT OF APPEAL, FIJI ISLANDS
AT SUVA
APPELLATE JURISDICTION

CRIMINAL APPEAL NO: AAU 0078/2008
(HIGH COURT CRIMINAL ACTION NO: HAM 040/08)

BETWEEN:

PENIASI TUILASELASE

Appellant

AND: **THE STATE**

Respondent

Coram: The Hon. Mr. Justice Devendra Pathik,
Justice of Appeal

Counsel: Appellant in Person
Ms Seini K Puamau for the Respondent

Hearing: 23 September 2009

Date of Ruling: 23 October 2009

Ruling

[Leave to Appeal Out of Time against Conviction on a Guilty Plea]

Background Facts

[1] This is an application by the appellant **Peniasi Tuilaselase** for an order that he be granted leave to appeal against his conviction two years out of time.

[2] Upon his plea of guilty he was convicted on 19 April 2006 by the Magistrate's Court at Suva for the offence of robbery with violence, unlawful use of motor vehicle and committing offence during the period of binding over, the

appellant was sentenced to imprisonment for a total of 7 years 6 months which on 18 August 2006 was reduced on appeal by High Court to 7 years imprisonment.

[3] The application is made under **Rule 40** of the **Court of Appeal Rules** by virtue of **section 20** of the Court of Appeal [Amendment] Act 1998 [Act No. 13 of 1998].

[4] On 7 December 2006 the appellant sought leave to appeal out of time to the High Court which was refused.

[5] Then on 6 February 2007 the then President of Court of Appeal dismissed the appeal under Section 35 [2] of the Court of Appeal Act.

[6] Thereafter on application for special leave to appeal to Supreme Court which related entirely to sentence, the petition was dismissed on 25 February 2008.

[7] Finally, application to High Court for leave to appeal 2 years out of time was dismissed by Goundar J on 11 July 2008.

[8] Now he applies to this Court [Court of Appeal] for leave to appeal out of time against conviction.

Consideration of the Application

[9] The main ground of his application is that his pleas of guilty were **equivocal** and that when his plea was taken he was **unrepresented** which was prejudicial to him.

[10] His Lordship Goundar J had very carefully considered the application before him and rejected it on the grounds stated by him in very clear terms. I agree with him in all respects

[11] In his Ruling His Lordship told him, and it is clear from the record that charges were read out to him, facts were outlined to him, and he understood the charges against him and pleaded guilty to both the charges. The applicant also admitted the 39 previous convictions against him. He went to the extent of speaking in mitigation.

[12] From the above there is no doubt that his plea was unequivocal and it was not necessary to have been asked if he needed counsel to represent him. He did not at anytime ask for one either.

[13] In his submission the appellant relying on the passage from the judgment of **Shameem J** in **Dip Chand f/n Dhani Chand –v- The State** *[Crim. App. No. 138/ 2005]* says that he should have been asked if he needs representation. The passage states, inter alia, that:

> **" When an unrepresented accused enters plea of guilty, the courts are required that the trial court ascertain from the accused's own statements personally in open curt that he or she is voluntarily making a plea of guilty and understands the nature of the charge and the general effect of the plea, before such plea is accepted."**

The learned Magistrate before whom the appellant appeared to take the plea was in the best position to decide whether the plea was defective.

[14] No doubt where a person is unrepresented the trial Judge has a duty to

> **" exercise the greatest vigilance with the object of ensuring that before a plea of guilty is accepted the accused person should fully comprehend exactly what that plea of guilty involves, "[Michael Iro –v- Reginam *CA [Hammet P, Marsack, JA, Gould JA, 12 FLR 104 at 106*]**

[15] The applicant appeared before the Resident Magistrate and he was satisfied that it was an unequivocal plea of guilty. The Magistrate was in a better position to judge whether he understood the charge or not than this court.

[16] As **Lord Reading CJ** in **Rex –v- Golathan** [1915] 84 in LJ.K.B 758 at 759 said:

> **"It is a well known principle that a man is not to be taken to have admitted that he has committed an offence unless he plead guilty in plain, unambiguous and unmistakable terms."** [Emphasis mine]

Here the learned Magistrate was satisfied that the applicant pleaded in those terms. Not only that, he pleaded with full understanding of all that it implied.

[17] In this court in the case of **Director of Public Prosecutions –v- Ram Sami Naidu** s/o Yankatsami Naidu [Criminal Appeal No. 34/84] where the circumstances were similar to this case, after referring to the following section 309[1] of the Criminal Procedure Code, it is stated that "each case" **must be dealt with on its own particular facts and there must be an intentional and unequivocal admission of guilt by an accused adequately informed of the substance of the charge or complaint."**

[18] The learned Judge did not find anything in the record to raise any suggestion that the pleas were equivocal. I have no reason to differ from him in this regard.

[19] In **Naidu** [supra p4-5, cyclostyled Judgment of 31.10.84] the following passage is pertinent with reference to **Mishra J's** judgment in **Navitalai Gukisuva –v- R.** Cr. App. 4/78 where his Lordship is stated to have said:-

> **" that where an illiterate unrepresented person pleads guilty, the court should treat it as provisional only and defer the final acceptance until the facts have been fully outlined by the prosecution and admitted by the accused. We respectfully agree with this approach and it is evident from the record that this is precisely what happened here. The accused's acknowledgment of the facts supports the view that he had an adequate appreciation of the charge to know the significance of what he was pleading to."**

Conclusion

[20] The appeal is devoid of merits. It is well out of time by two years.

[21] I am satisfied that not only were the charges explained but were understood by the appellant; he admitted the facts and spoke in mitigation. The plea was unequivocal.

[22] With 39 previous convictions he is no stranger to court procedure. Raising the issue of non-representation at this late stage will not assist the appellant and Shameem J's statement which he misinterpreted will not avail him in this case.

[23] Like the learned Judge I also hold that even if leave were to be granted, the appellant had no chance of success in the appeal.

[24] In fact this is a frivolous and vexatious application and a sheer waste of everyone's time.

[25] This is the appellant's second attempt wanting to be heard on matters which he did not raise before when he applied for special leave to appeal to Supreme Court.

[26] The appellant climbs to the top of the ladder and when he is thrown to the ground he tries to climb up again. This cannot be entertained in a court of law. His rights to appeal have been exhausted.

[27] I adopt the following words of **Jordan J** in the judgment in **R –v- Edwards [No.2] [1931] S.A.S.R 326** which I consider apt in this case:

> **" When an appeal has once been fully heard and disposed of, that is, in my opinion, an end of the matter so far as appeal is concerned, and the prisoner cannot continue to appeal from time to time thereafter, whenever a new point occurs to him or**

to his legal advisers or whenever a new fact is alleged to have come to light."

[28] For the above reasons leave to appeal should be dismissed.

Dated at Suva this 23rd day of October 2009

D. Pathik

Judge of Appeal