

IN THE COURT OF APPEAL, FIJI ISLANDS
APPELLATE JURISDICTION

Criminal Appeal No: AAU0063 of 2008

BETWEEN:

ELENAVA RAULUKAVA

Appellant

AND:

THE STATE

Respondent

Coram: Goundar JA
Temo JA

Date of Hearing: 24th May 2010

Counsel: Appellant in person
Mr. S. Qica for State

Date of Judgment: 11th June 2010

JUDGMENT OF THE COURT

- [1] The appellant pleaded guilty in the Magistrates' Court to one charge of robbery with violence and one charge of unlawful use of motor vehicle. He was sentenced to 7 years for robbery with violence and 6 months for unlawful use of motor vehicle, to be served concurrently.
- [2] He appealed against sentence to the High Court. The appeal was out of time. The High Court granted leave but dismissed the appeal on 20 March 2008. On 26 May 2008 he applied for leave to appeal to this Court as his appeal was outside the appeal period of 30 days prescribed by section 26 of the Court of Appeal Act. On 31 October 2008, Byrne P refused him leave to appeal out of time.
- [3] This is an application to the Full Court to appeal out of time against sentence.
- [4] The grounds of appeal are that the learned magistrate gave insufficient weight to his guilty pleas and to the fact that stolen items were recovered.
- [5] In his sentencing remarks, the learned magistrate picked 8 years as a starting point after referring to the guidelines established by this Court in *Sakiusa Basa v State* [2006] AAU0024/05 (24 March 2006) and *Tomasi Vosalevu v State* [2006] AAU002/05 (apf HAC 0023/035). The learned magistrate considered the use of weapon, the number of men involved and the infliction of actual violence on the victims in the security of their home as factors aggravating the offence. He increased the sentence by 2 years to reflect those factors. The sentence was then reduced by 2 years for the guilty pleas and 1 year for other mitigating factors before arriving at the final term of 7 years imprisonment.
- [6] The learned magistrate quite correctly pointed out that the offenders were not entitled to benefit from the recovery of the stolen items because the items were recovered without any assistance from them.

[7] On appeal the High Court found the sentence was not wrong in principle and dismissed the appeal.

[8] Section 22 of the Court of Appeal Act governs appeals from the High Court in its appellate jurisdiction to this Court. Section 22 provides:

(1) Any party to an appeal from a magistrate's court to the High Court may appeal under this Part, against the decision of the High Court in such appellate jurisdiction to the Court of Appeal on any ground of appeal which involves a question of law only.

Provided that no appeal shall lie against the confirmation by the High Court of a verdict of acquittal by a magistrate's court.

(1A) No appeal under subsection(1) lies in respect of a sentence imposed by the High Court in its appellate jurisdiction unless the appeal is on the ground –

(a) the sentence was an unlawful one or was passed in consequence of an error of law; or

(b) that the High Court imposed an immediate custodial sentence in substitution for a non-custodial sentence.

[9] The total sentence of 7 years imprisonment was within the jurisdiction of the Magistrates' Court. The sentence was arrived at after full consideration was given to all the relevant factors including the guilty pleas of the appellant. It was not an unlawful sentence or passed in error of law. In our judgment this appeal is bound to fail because there is no right of appeal.

[10] Leave to appeal is refused.



Hon. Mr. Justice D. Goundar
Judge of Appeal



Hon. Mr. Justice S. Temo
Judge of Appeal

Solicitors:

Appellant in person

Office of the Director of Public Prosecutions for State