

IN THE COURT OF APPEAL, FIJI ISLANDS
APPELLATE JURISDICTION

CRIMINAL APPEAL AAU 0040 OF 2008
[High Court Criminal Appeal No. HAA
110 of 2007S]

BETWEEN:

JAMES WILLIAM

APPELLANT

AND:

THE STATE

RESPONDENT

Coram : D. Goundar, JA
W. Calanchini, JA
S. Temo, JA

Counsel : Appellant in Person
Ms. P. Madanavosa for the Respondent

Date of Hearing : 26th May, 2010

Date of Judgment : 25th November, 2010

JUDGMENT OF THE COURT

[1] On 20th March 2006, at the Suva Magistrate Court, the appellant pleaded guilty to "robbery with violence", contrary to section 293(1)(a) of the Penal Code, Chapter 17. He was sentenced to 6 years imprisonment for the above offence. A one year partly activated suspended sentence was added to the above 6 years imprisonment, making a total sentence of 7 years imprisonment.

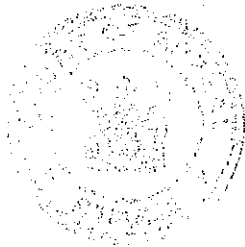
- [2] The "robbery with violence" was committed on 21st April 2005, in broad daylight. Mr. Hans Juergan, a German tourist, was crossing the road opposite Caines Janif, with his wife. He had \$10,000 Euros in his wallet inside his left side pocket. \$10,000 Euros is equivalent to Fiji \$20,530. Suddenly, the appellant and 3 others surrounded him, forcefully lifted his arm, and took his wallet. They then fled the scene. Only \$500 Euros was later recovered.
- [3] The appellant appealed to the High Court, complaining that the total sentence of 7 years imprisonment, imposed by the Magistrate Court, was harsh and excessive. The High Court, on 26th October 2007, held that the conviction was properly entered. However, since the complainant was not injured and no weapons used in the robbery, the High Court decreased the 6 years imprisonment for "robbery with violence" to 5 years imprisonment. The High Court considered the partial activation of the suspended sentence as correct, and thus did not disturb it. The total sentence after appeal was 6 years imprisonment.
- [4] The appellant sought leave to appeal to the Court of Appeal, on the ground that the total 6 years imprisonment was harsh and excessive. On 10th June 2008, His Lordship Mr. Justice John E. Byrne, sitting as a single Judge of the Court of Appeal, dismissed the application, on the ground there was no merit in the same. The appellant then appealed to the full Court of Appeal.
- [5] The power of the Court of Appeal on appeals from the High Court sitting in its appellate jurisdiction are set out in section 22(1) and (1A) of the Court of Appeal Act, which reads as follows:
- "...22.(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:**
- (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) *that the sentence was an unlawful one or was passed in consequence of an error of law...*"

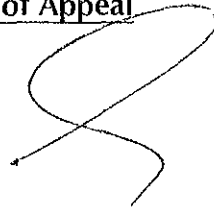
- [6] Was the sentence passed in the High court "an unlawful one or was it passed in consequence of an error of law?" We have carefully examined the Court record, and we have found nothing to say that the sentence passed in the High Court was "an unlawful one or passed in consequence of an error of law". If anything, we endorsed the views expressed by His Lordship Mr. Justice John E. Byrne, sitting as a single Judge of the Court of Appeal, when he dismissed the appellant's application for leave to appeal, on 10th June 2008.
- [7] In summary, the appellant's appeal against sentence is without merit, and we dismiss it accordingly.



Hon. Mr. Justice D. Goundar
Judge of Appeal



Hon. Mr. Justice W. Calanchini
Judge of Appeal



Hon. Mr. Justice Salesi Temo
Judge of Appeal

Solicitors:

Appellant in Person

Office of the Director of Public Prosecutions for State