

IN THE COURT OF APPEAL
[On Appeal From The High Court]

CRIMINAL APPEAL NO: AAU0029 OF 2012
(High Court Case No: HAC 42 of 2009)

BETWEEN : **THE STATE**
Appellant

AND : **DEEPAK RAJNEIL KAPOOR**
Respondent

Coram : Goundar JA

Counsel : Ms J. Prasad for the Appellant
Ms N. Karan for the Respondent

Date of Hearing : 29 April 2014

Date of Ruling : 2 June 2014

RULING

- [1] The State seeks leave to appeal against sentence imposed on the respondent by the High Court at Suva.
- [2] The charges arose when the respondent was employed as a legal clerk by the Public Trustees Corporation Limited. It was alleged that the respondent systematically stole from the trust funds by falsifying accounts of three beneficiaries. The total amount defrauded was \$88,006.94. After stealing the money, the respondent laundered it through his bank account.
- [3] Before commencement of trial, the respondent pleaded guilty to five counts of larceny by servant contrary to section 274(a) of the Penal Code and one count of money laundering contrary to sections 69(2)–(3)(a)(b) of the Proceeds of Crime Act of 1997. For each count, the respondent was sentenced to 16 months' imprisonment. The larceny sentences were

made concurrent while the money laundering sentence was made 12 months concurrent and 4 months consecutive with the larceny sentences. The total effective sentence was 20 months' imprisonment.

[4] The grounds of appeal against sentence are:

- (i) That the learned Judge erred in law and in fact in referring to the tariff and case laws for simple larceny when the Respondent was convicted for the offence of Larceny by servant.
- (ii) That the Learned Judge erred in law in sentencing Money Laundering based on an ancillary offence.

[5] Counsel for the respondent opposes leave. Counsel submits that the delay in hearing the appeal is highly prejudicial to the respondent because he has served his sentence and has been released from the prison. While I accept that there has been some delay in hearing this appeal, I cannot attribute that delay on the appellant because the appeal was filed within time by the State. The delay in this case was systematic and was caused by lack of appellate court resources. In any event, prejudice arising from delay is a matter that is not relevant in determination of an application that is made pursuant to section 21 (2) (c) of the Court of Appeal Act.

Ground 1 – Use of wrong tariff

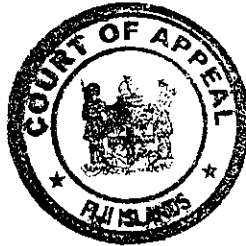
[6] I accept that the use of tariff for an offence that the respondent was not charged with can give rise to an error of principle. It is clear from paragraph 14 of the sentencing remarks that the learned judge used the tariff for simple larceny (2-9 months imprisonment) to sentence the respondent for larceny by servant. The respondent was not charged with simple larceny. He was charged with the serious offence of larceny by servant. The tariff for larceny by servant is between 2 and 3 years imprisonment as established by *Panniker v State Cr. App No. 28 of 2000* and *State v Roberts Cr. App No. 53 of 2003*. Arguably there was an error of principle made by the learned High Court judge in applying the wrong tariff.


Ground 2 – Money laundering

- [7] The learned judge based the money laundering sentence on the predicate offence. Counsel for the State submits that this was an error of principle. Counsel refers to 69(4) of the Proceeds of Crime Act which states money laundering is not predicated on proof of the commission of a serious offence.
- [8] The State counsel has further referred to Hong Kong cases which turn to suggest that the offence from which the money was derived should be of no particular significance in sentencing for money laundering. The learned judge justified the use of predicate offence to sentence the respondent for money laundering based on the Court of Appeal's decision in *O'Keefe v State Cr. App. No. AAU29 of 2007*. Whether *O'Keefe* was correctly considered is not for me to determine in this application. As far as leave is concerned, the State has satisfied the test that there is an arguable error of principle arising from the use of predicate offence in sentencing the respondent for money laundering.

Result

- [9] Leave is granted to the State to appeal against the respondent's sentence.




.....
Hon. Justice D. Goundar
JUSTICE OF APPEAL