

IN THE COURT OF APPEAL, FIJI
APPELLATE JURISDICTION

CRIMINAL APPEAL NO. AAU 0069 OF 2014
[High Court Criminal Case No. HAC01 of 2013]

BETWEEN : SUBRAMANI NAIDU *Appellant*

AND : THE STATE *Respondent*

Coram : Hon. Mr. Justice Daniel Goundar

Counsel : Mr. S. Sharma for the Appellant
Mr. L. J. Burney for the Respondent

Date of Hearing : 15 January 2015

Date of Ruling : 10 June 2015

RULING

[1] This is an application for an extension of time to appeal against conviction and sentence. The factors to be considered are:

- (i) The reason for the failure to file within time.
- (ii) The length of the delay.
- (iii) Whether there is a ground of merit justifying the appellate court's consideration.
- (iv) Where there has been substantial delay, nonetheless is there a ground of appeal that will probably succeed?
- (v) If time is enlarged, will the Respondent be unfairly prejudiced? (*Kumar v State*; unreported Cr. App. No. CAV 0001/09; 21 August 2012 at [4] per Gates CJ).

- [2] The appellant was charged with one count of murder and one count of attempted murder. He pleaded guilty to the charges in the High Court at Lautoka. On 14 March 2013 he was sentenced to life imprisonment for murder and 10 years' imprisonment for attempted murder, to be served concurrently.
- [3] The appellant was further ordered to serve a non-parole period of twenty years. On 12 June 2014, the Registry received an application for leave to appeal against sentence. The application was filed in person by the appellant. Arrangements were made for the appellant to apply for legal aid. Once legal aid was approved, counsel for the appellant made a formal application for an extension of time to appeal against both conviction and sentence.
- [4] The proposed grounds of appeal are:

Ground One

The learned trial Judge erred in law and in fact when he failed to consider the defence of insanity which was available to the Applicant by virtue of medical evaluation done by the St. Giles Hospital which showed that the Applicant was suffering from a mental illness.

Ground Two

The learned Trial Judge erred in law and in fact when he did not properly put the right to have legal representation to the Applicant.

Ground Three

The learned Trial Judge erred in law and in fact when he failed to ensure that the Applicant understood the elements of the offences he was charged with.

Ground Four

The learned Trial Judge erred in principle and also in erred in failing to take into account some relevant considerations resulting in a non-parole period of 20 years which was excessive.

- [5] It is not in dispute that the appellant has a history of mental illness. He was first diagnosed with Schizophrenia in 1995. Since then he had been receiving treatment and on a few occasions he had been a patient at the St. Giles Hospital, a government facility for mentally ill patients. At the time the allegations arose, the appellant resided with his elderly mother at the outskirts of Nadi town. On the day in question, the appellant struck his 2 ½ year-old nephew with a cane knife and when his elderly mother (74 years old) came to the child's rescue he struck his mother, severing her right hand. The child died while his elderly mother survived the attack. When the incident happened, the appellant had stopped taking his medications.
- [6] At this stage it is not clear whether there was a care order made for the appellant under the Mental Health Decree 2010.
- [7] Before taking the plea, the learned High Court judge had obtained a psychiatric evaluation report on the appellant. The evaluation was carried out by Dr. Narayan, a consultant psychiatrist at the St. Giles Hospital. The report is dated 2 November 2012. The content of the report was adopted by the learned judge in his sentencing remarks at paragraph [10]. The report stated that the appellant was aware of his actions and understood the consequences of his actions on the day of the alleged offences. The report concluded with the following remarks:

"In my opinion the Defendant needs lifelong treatment with medications. He was not taking medications for years prior to his alleged act. Though he appeared aware of his actions, he was most likely in an ill state due to his not taking prescribed medications. Hostility, aggression and poor impulse control can also occur as part of the mental illness.

I recommend that the Defendant continue to receive medications at the nearest health facility under Community Treatment Order, or in prison, if convicted."

- [8] When an unrepresented accused pleads guilty to a serious charge like murder, the judge is obliged to ensure the accused is aware of the consequences of his guilty plea. It is not clear when the appellant was advised of his right to counsel, and if he was, then whether he understood his trial rights and whether there was an informed and intelligent waiver of rights by him. The need for care is greater when the unrepresented accused is mentally ill. These matters require careful examination, and I am satisfied that the grounds of appeal against conviction are arguable.

[9] The length of the non-parole period is arguably excessive. The State concedes that the appellant's guilty plea and remand period may not have given due consideration in fixing the length of the non-parole period.

[10] Although the length of the delay is significant, the reason for the non-compliance is associated with the appellant's mental illness. The State has not pointed out to any prejudice if an extension of time is granted. In the interests of justice, I grant the appellant an extension of time and leave to appeal against conviction and sentence.

Result

[11] Extension of time granted.

Leave to appeal against conviction and sentence granted.



A handwritten signature in blue ink, appearing to read "D. Goundar", is written above a dotted line.

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Hon. Justice D. Goundar
JUSTICE OF APPEAL

Solicitors:

Office of the Legal Aid Commission for the Appellant
Office of the Director of Public Prosecutions for State