

IN THE HIGH COURT OF FIJI

AT LAUTOKA

APPELLATE JURISDICTION

CRIMINAL MISCELLANEOUS CASE NO: HAA 74 OF 2018

(BA CRIMINAL CASE NO: 411 OF 2018)

BETWEEN : INOKE KOROI KOROIMECA

Appellant

AND : STATE

Respondent

Counsel : Appellant in Person

Mr. J Nuidamu for Respondent

Date of Hearing : 21 January 2019

Date of Judgment : 29 January 2019

JUDGMENT

1. At the Tavua Magistrates Court, the Appellant was convicted as charged on his own guilty plea for the offence of Absconding Bail contrary to Section 25 (1) and 26 (1) of the Bail Act No. 26 of 2002.
2. On the 3rd October, 2018, the Appellant was sentenced to 6 months imprisonment.
3. Being dissatisfied with the decision of the Magistrates Court, the Appellant filed his grounds of appeal against his sentence within time.

GROUND OF APPEAL

4. The Appellant in person filed following grounds of appeal:
 - (i) That the learned Magistrate erred in law and in fact when he failed to deduct the proper discount for the period of remand thus the full effect of Section 24 (1) of the Sentencing and Penalties Act was not afforded to the Appellant.
 - (ii) That the learned sentencing Magistrate erred in law and in fact when he failed to consider the appellants early guilty plea, the totality principle thus making the sentence harsh and excessive.
 - (iii) That the learned sentencing Magistrate erred in law and in fact when he failed to give cogent reason for making the sentence, that the Appellant was fully co-operative with the police officers during the arrest.

- (iv) That the learned Magistrate erred in law and in fact that he did not carry enough weight of the mitigating factors of the Appellant.
5. Grounds raised by the Appellant are based on the premise that the sentence is harsh and excessive and wrong in principle. Therefore, all the grounds can conveniently be dealt together.
6. The learned sentencing Magistrate correctly identified the maximum penalty for the offence of Absconding Bail which carries a maximum imprisonment term of 12 months or a fine of \$2,000.00.
7. According to the charge, the Appellant has committed this offence on 9th August, 2017. The tariff for this offence at that time was from a suspended sentence to 6 months imprisonment. In *James Ashwin Raj vs. The State*, criminal appeal case no. HAA 032 of 2008 (18 April, 2008) Mataitoga J held:

"I would set the tariff for sentence to range from a non-custodial to 6 months imprisonment. It is possible depending on the facts that one may go higher, but it will be exceptional"

8. However, the Learned Magistrate at paragraph 8 of his Ruling stated that the tariff would be from 1-9 months imprisonment or suspended sentence depending on the circumstances of each individual case.

9. By the time the Learned Magistrate imposed the sentence the above tariff for the offence of Absconding Bail had been reviewed by Madigan J. in Saula Lalagavesi v. State, criminal appeal nos. HAA 83 of 2018 and HAA 77 of 2018 (23 November, 2018). The tariff now is from a suspended sentence to 9 months imprisonment.
10. However, the Learned Magistrate should have applied the tariff that was in existence at the time of offence.
11. I have carefully perused the court record and in particular the sentence determination of the Magistrate in this case. I find no exceptional reasons to sentence the Appellant beyond tariff. Therefore stating point should have been picked from the middle or lower range of the tariff as it was then existed.
12. There are no aggravating features in the offending. The Appellant had absconded only once and he had given an explanation for his absence which could have been considered by the Learned Magistrate in mitigation. Moreover the Appellant had pleaded guilty at the first available opportunity and had expressed remorse as noted by the Learned Magistrate. Although the Appellant was arrested for failing to come to court he had cooperated with the police which was not taken into account as a mitigating factor.
13. The Appellant in his first ground of appeal sates that the Learned Magistrate failed to deduct the proper discount for the period of remand. However, the Learned Magistrate has in fact considered the time spent in remand at paragraph 5 of his Ruling although he was not required in this case to exercise his discretion in favour of the Appellant under Section 24 of the Sentencing and Penalties Act.

Section 24 of the Sentencing and Penalties Act does provide for time in custody to be deducted unless a court otherwise orders, be regarded as a period of imprisonment already served. In this case, the Appellant, by breaching his bail conditions, is deemed to have waived his right to receive such a reduction and therefore should not be allowed to take advantage of his wrong doing and be rewarded with a reduction for remand period at the same time.

14. In Saula Lagalavesi v State (HAA 83 of 2018 and HAA 77 of 2018 (23 November, 2018) Madigan J, observed:

“Any time spent in custody before conviction for this offence cannot be allowed to be discounted from the term imposed by the Magistrate. It is time he is spending in custody as a result of dishonouring the terms of bail. To allow otherwise be to reward such an accused for breaching his bail conditions”

15. The sentence arrived at by the Learned Magistrate for the count of Absconding Bail for a first offender was excessive considering the facts and circumstances of the offending. The Learned Magistrate fell in error when he relied on an incorrect tariff which has resulted in an excessive sentence.
16. An imprisonment period of three months will be commensurate with the offence the Appellant has committed.

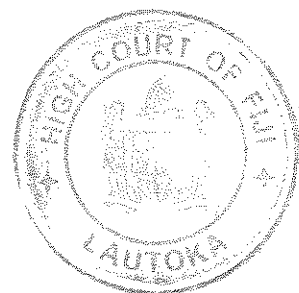
17. The sentence imposed by the Magistrate is set aside and substituted with an imprisonment period of 3 months with effect from 3rd October, 2018. Since he has already served more than 3 months, the Appellant is ordered to be released forthwith.

18. **Orders**

- i. Appeal is allowed.
- ii. The sentence imposed by the Magistrate is set aside.
- iii. An imprisonment period of 3 months is substituted with effect from 3rd October, 2018.
- iv. The Appellant is released forthwith.


Arund Aluthge

Judge



At Lautoka

29th January, 2019

Solicitors: Appellant in Person

Office of the Director of Public Prosecution for Respondent