

IN THE HIGH COURT OF FIJI
AT LABASA
[APPELLATE JURISDICTION]

CRIMINAL APPEAL CASE NO. HAA 11 OF 2020

(Magistrates' Court Case No. 567 of 2018)

BETWEEN: **TANIELA KOROI**

APPELLANT

AND: **THE STATE**

RESPONDENT

Counsel: **Appellant in Person**
 Ms A Vavadakua for the Respondent

Date of Hearing: **18 May 2020**

Date of Judgment: **22 May 2020**

JUDGMENT

[1] This is an untimely appeal against conviction and sentence.

[2] The appellant was charged with one count each of assault causing actual bodily harm, breach of domestic violence restraining order and breach of bail conditions. On 7 December 2018, he appeared in the Magistrates' Court and pleaded guilty to the charges. On 25 February 2020, he was sentenced to a total term of 20 months' imprisonment with a non-parole period of 14 months.

- [3] The facts of the case are follows.
- [4] The victim is the de-facto partner of the appellant. The couple is in their early thirties. In the early hours of 14 October 2018, the appellant dragged the victim out of her house and took her to a bus shelter. Upon reaching the bus shelter, the appellant punched the victim several times on her mouth, neck and head. After assaulting her he left her at the bus shelter. When she returned home and was inside her house, the appellant returned and made verbal threats to kill and assault her inside her house. The matter was reported to police and the victim was medically examined. She sustained an abrasion on her tongue. The appellant assaulted the victim at a time when he was subject of a DVRO and bail conditions not to interfere with her.
- [5] When the appellant was sentenced on 25 February 2020, he was serving a pre-existing sentence in relation to an offence of assault on the same victim. Since the learned magistrate did not direct the new sentence to be served consecutively, both sentences were required to be served concurrently under section 22 (1) of the Sentencing and Penalties Act.
- [6] The appellant's hand written Notice of Appeal is dated 21 April 2020. By that time the appeal was out of time by one month. However, the delay is excused because the period of filing was affected Covid-19 lockdown. There is no prejudice to the State if an enlargement of time is granted.
- [7] The most important consideration is whether the appeal has merits.
- [8] Section 247 of the Criminal Procedure Act prohibits an appeal against a conviction arising from a guilty plea in the Magistrates' Court. However, there are circumstances in which an appeal may lie against conviction arising from a guilty plea. One of the instances is when there is some evidence of equivocation on the record (*Rex v Golathan*

(1915) 84 L.J.K.B 758, *R v Griffiths* (1932) 23 Cr. App. R. 153, *R v. Vent* (1935) 25 Cr. App. R. 55).

[9] Further, a guilty plea must be a genuine consciousness of guilt voluntarily made without any form of pressure to plead guilty (*R v Murphy* [1975] VR 187, *Meissner v The Queen* [1995] HCA 41; (1995) 184 CLR 132).

[10] In *Maxwell v The Queen* (1996) 184 CLR 501, the High Court of Australia said at p. 511:

The plea of guilty must however be unequivocal and not made in circumstances suggesting that it not a true admission of guilt. Those circumstances include ignorance, fear, duress, mistake, or even the desire to gain a technical advantage. The plea may be accompanied by a qualification indicating that the accused is unaware of its significance. If it appears to the trial judge, for whatever reason, that a plea of guilty is not genuine, he or she must (and it is not a matter of discretion) obtain an unequivocal plea of guilty or direct that a plea of not guilty be entered.

[11] In *Michael Iro v Reginam* FLR 12 the Court of Appeal explained the duty of the court to exercise vigilance before accepting a plea of guilty from an unrepresented accused at 104:

There is a duty upon a trial judge, where an accused person is unrepresented, to exercise the greatest vigilance to ensure that the accused person fully comprehends exactly what the plea of guilty involves.

[12] According to the court record, the appellant entered his guilty pleas freely, after waiving his right to counsel. He admitted the facts in support of the charges and then presented his mitigation. At no stage he indicated to the learned magistrate that he was not exercising his free will to plead guilty. For the appellant now to claim that he pleaded guilty out of

convenience to bring a closure to the case has no bearing to his decision to plead guilty to the charges freely before the learned magistrate. The appeal against conviction has no merit.

[13] At the hearing, the appellant's only complaint against sentence was that the learned magistrate should not have imposed a non-parole period. The learned magistrate exercised his discretion under section 18(3) of the Sentencing and Penalties Act to fix a non-parole period. The non-parole period fixed is six months less than the head sentence in compliance with section 18(4) of the Sentencing and Penalties Act.

[14] The learned magistrate noted that the appellant assaulted his de-facto partner on a second occasion in breach of a DVRO and bail conditions. The appellant's repeated use of violence against his partner called for a deterrent sentence. The head sentence and the non-parole period that the learned magistrate imposed were to give effect to the principle of deterrence applicable to the appellant. There is no error in the exercise of the sentencing discretion.

[15] For these reasons, an enlargement of time is granted but the appeal is dismissed.



.....
Hon. Mr Justice Daniel Goundar

Solicitors:

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

