IN THE COURT OF APPEAL, FIJI ISLANDS
ON APPEAL FROM THE HIGH COURT OF FIJI

CRIMINAL APPEAL N0. AAU0013 OF 2005S
(High Court Criminal Action N0. HAJ0008 of 2003)

BETWEEN:

ABARAMO COKANASIGA

Appellant

A N D:

T H E S T A T E

Respondent

Coram: **Ward, President**
Wood, JA
Ford, JA

Counsel: Appellant in person
K Tunidau for respondent

Hearing: Hearing: 8 November 2005

Date of Judgment: 11 November 2005

J U D G M E N T

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[1] The appellant appeared before the Lautoka Magistrates' Court on 11 August 2003 charged with unlawful use of a motor vehicle, wrongful confinement and robbery with violence. He pleaded guilty and, after hearing the facts and antecedents, the Resident Magistrate committed him to the High Court for sentence under section 222 of the Criminal Procedure Code.

[2] He appeared in the High Court on 15 August 2003 with one other co accused, Seremaia Cakau. The facts can be taken from the sentencing judgment:

> "On 31 July 2003 at approximately 5.00am, the security officers of Armourguard were in the process of transferring money from Armourguard vaults at Lautoka to a van ... to take to Nadi airport.
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> Just prior to this, Abaramo with another hired a carrier from Lautoka town and asked the driver to drive to Natabua ostensibly to pick up the accused's children. On the way at Field 40 one of the men asked the driver to stop whereupon they grabbed the driver tied him up and handcuffed him to the back of the van. Then they were joined by Seremaia and five others. They then drove to the Armourguard office at Veitari.
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> At that office while the security officers were in the process of loading their own security van, they were surprised by the two accused and the co-offenders. They were threatened with a knife and an iron rod and the accused demanded to be shown the vault where the money was. One of the security guards tried to close the vault door but was hit on the head with a bar and another security guard in the vault was hit on the leg. Both suffered injuries, one a cut on the head and the other a swelling on the leg.
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> Fearing for their lives the frightened security guards opened the safe. The two accused with the others then filled five bags in local and foreign currencies and got into the stolen van and got away. Some time later they abandoned the van with the driver still handcuffed inside and escaped.

A total of $1,329,487.25 was stolen.

Seremaia was arrested on 5 August 2003 ...and admitted being part of the plan ... A sum of approximately $25,000 and an outboard ... that he had bought with his share ... were recovered

Abaramo was equally forthcoming and co-operative to the extent of doing a reconstruction. A sum of approximately $130,000 was recovered as his share of the loot."

[3] The appellant was sentenced to six and a half years imprisonment for robbery, two years for wrongful confinement and six months for unlawful use of the motor vehicle. The sentences were ordered to be served concurrently giving a total of six and a half years. He appeals against that sentence.

[4] His grounds of appeal are that the sentencing judge (1) failed to give any or sufficient credit for the appellant's immediate admission and plea of guilty, (2) failed to consider the totality principle in determining the sentence with the consequence that it was excessive, and (3) that it does not accord with sentences for similar offences in other cases.

[5] The first ground can be dealt with shortly. The judge clearly did give credit for the plea. Having referred to the co-operation of this appellant in the passage set out above, he later added:

"The mitigating factors include the prompt plea of guilty and the co-operation extended to the police by the two accused. I also take in their favour the fact that the same money has been recovered."

[6] The appellant correctly states that, in any case where the court is passing sentences of imprisonment for more than one offence, it must pass the proper sentence for each separate offence but then further consider the overall effect of

those sentences if they are to be consecutive. It must consider the totality of the offending in order to decide the final length of sentence. Whilst that requires the court to consider the total sentence, it must be determined against the overall seriousness of the offender's behaviour.

[7] In the English case of *R v Barton*, 6 October 1972, as quoted in Archbold at paragraph 5-166, Lawton LJ stated:

> "When these cases of multiplicity of offences come before the court, the court must not content itself by doing the arithmetic and passing the sentence which the arithmetic produces. It must look at the totality of the behaviour and ask itself what is the appropriate sentence for all his offences."

[8] This is applied both where the offender is to be sentenced for a series of lesser offences which, if made consecutive would produce a total sentence more appropriate to a more serious crime or where, as in the present case, the offender is to be sentenced for a serious offence and other much less serious offences.

[9] It is clear that the learned judge took the view that the robbery charge was by far the most grave and should set the overall sentence:

> "The unlawful use of a motor vehicle is a bad enough offence, but not as serious as wrongful confinement. Robbery with violence however stands apart from the other two for which the legislature has provided a term of imprisonment for life."

[10] Having determined the appropriate sentence for that offence, he ordered that the sentences for the lesser offences should be served concurrently with it. That was a correct application of the totality principle and we would not interfere on this ground.

[11] In respect of the final ground, the appellant cited a number of cases of robbery with violence in many of which the facts appear to be extremely serious and in some of which shorter sentences were passed. Understandably one of the commonest grounds of complaint by prisoners about sentence is that other offenders appear to have been sentenced more leniently. However, each case is dealt with on its own facts and there may be many reasons why an apparently inconsistent sentence has been passed.

[12] Where there is disparity in sentences passed on different accused in the same case, the court will always consider the reasons for the disparity. However appellate courts will not compare sentences in separate cases unless there is clear evidence that the decision in the case being appealed was wrongly decided on where it is necessary to ascertain the proper guidelines for such offences.

[13] In the present case, this was a serious and carefully planned robbery. The judge assessed the various mitigating and aggravating factors:

> "This particular robbery was a brazen and contemptuous defiance of the law. It was planned with great efficiency and perfection and executed with professional skill. ...
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> The mitigating factors included the prompt plea of guilty and the cooperation extended to the police by the two accused. I also take in their favour the fact that the same money has been recovered.
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> But these are far outweighed by the nature of the offending. It was planned with care and precision, that a large amount of money was stolen, that at least two security guards were injured and a helpless driver was subjected to the ordeal of being handcuffed to his vehicle in the process."

[14] The appellant had a number of previous convictions. Four were for robbery with violence, of which the last was in June 2001. The appellant must have been released from prison for that offence only one year before he took part in this one.

[15] The learned judge undertook a careful review of the sentencing guidelines in recent cases and then considered that the appropriate total sentence was six and a half years based on the seriousness of the robbery. We can find no reason to reach a different conclusion.

[16] One further point must be mentioned. The learned judge sentenced the appellant to two years imprisonment on the wrongful confinement charge. In doing so, he overlooked the fact that the offence proved amounted to one under section 256 of the Penal Code, which carries a maximum sentence of twelve months. It is not surprising he made such an error because the statement of offence purports, incorrectly, to charge the appellant with "Wrongful Confinement; contrary to section 253 and 256 of the Penal Code". The judge himself realized his mistake soon afterwards and, in a memorandum to the registrar of the Court on 29 August 2003, pointed out the error.

[17] We allow the appeal on that sentence only and quash it.

[18] The wrongful confinement of the van driver was very serious. Not only was he kept prisoner in his van throughout the robbery but he was left handcuffed to the van when it was abandoned. The Court has not heard how he was found but the manner in which he was left showed a total disregard for the consequences had he not be discovered. We substitute a sentence of imprisonment for one year.

[19] This was a separate offence which caused serious risk to another person distinct from the security guards who were the subject of the planned robbery. Had the judge, as a result, felt it appropriate to make that sentence consecutive to the six and a half years for the robbery we would not have interfered. However, in the circumstances we do not alter the order that it should be concurrent. As a result the change does not alter the overall sentence.

[20] The appeal is allowed in relation to count two, wrongful confinement, the sentence for which is quashed and a sentence of one year imprisonment substituted. It is otherwise dismissed.

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WARD, President

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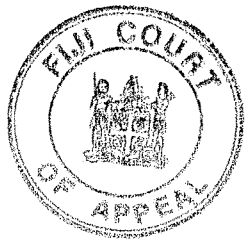
WOOD, JA



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FORD, JA

Solicitors:

Appellant in person, Suva
Office of the Director of Public Prosecutions, Suva the Respondent