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

APPELLATE JURISDICTION

CRIMINAL APPEAL NO.: AAUOO44 OF 2008
HIGH COURT CRIMINAL CASE NO.: HAC 91/2006 AND HAC 148/2007

BETWEEN:

JOPE RAMALASOU

-APPLICANT-

AND:

THE STATE

-RESPONDENT-

Counsel: Applicant in Person
 Ms. A. Prasad for the State

Date of Hearing: Monday 14th July, 2008
Date of Ruling: Friday 18th July, 2008

RULING

[1] On 12 October 2007, the applicant was sentenced to 5 months imprisonment after pleading guilty to the following offence:

“being in unlawful possession of 3.6 grams of illicit drugs, namely Indian Hemp botanically known as Cannabis Sativa, on the 15th of November 2005 at Naboro, contrary to Section 5(a) of the Illicit Drugs Control Act 9 of 2004.”

[2] The term of 5 months imprisonment was ordered to be served consecutively to an existing imprisonment sentence that the applicant was serving.

[3] The applicant had not commenced the serving of his 5 months imprisonment sentence, on 15 February 2008, was sentenced to 8 months imprisonment after pleading guilty to the following offence:

“being in unlawful possession of 13.8 grams of illicit drugs, namely Indian Hemp botanically known as Cannabis Sativa, on the 15th of March, 2005 at Naboro, contrary to Section 5(a) of the Illicit Drugs Control Act 9 of 2004.”

[4] The term of 8 months imprisonment was ordered to be served concurrently with the term of 5 months imprisonment. The effect is that the applicant has received a total sentence of 8 months imprisonment for two separate and distinct offences of being in possession of illicit drugs.

[5] The drug offences were committed in prison. The applicant was a serving prisoner when the drugs were found on him on two occasions.

[6] The gist of the applicant’s complaint is that the 5 months imprisonment which was ordered to be served consecutively to an existing imprisonment sentence, offends the totality principle. It is not clear from the record the total sentence the applicant was serving when the sentence of 5 months imprisonment was imposed on 12 October 2007. According to a memorandum dated 17 April 2008 from the Officer in Charge of the Medium Security Prison, the applicant is serving a term 12 years and 4 months imprisonment for offences not related to drugs.

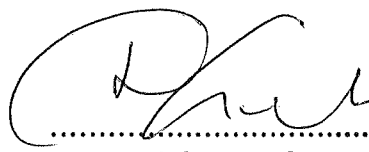
- [7] The application to appeal was filed on 29 April 2008, by which time the appeal was out of time by six (6) months. Leave is also required for appeal against sentence.
- [8] For the applicant to succeed in the application, he must show good cause for the late filing of appeal, merits of the appeal, and the absence of prejudice to the State (*State v Patel*, Criminal Appeal No. AAU0002 of 2002S).
- [9] The applicant has not offered any good reason for the late filing of appeal.
- [10] As for merits of the appeal, in *Baleiloa v State*, Criminal Appeal No. AAU0039 of 2005S, the full Court considered the proper approach to cumulative sentences on an appeal. The Court said:
- "Where a question arises, in relation to whether later sentences should be served consecutively with existing sentences or cumulatively upon them, the critical issue for the court is whether the overall sentence, including the fact of accumulation, properly reflects the totality of the criminality involved: *Pauliasi Bote v The State*, Criminal Appeal No. AAU0011 of 2005; and whether that sentence would have been appropriate, had the appellant come before the court for sentence for all of the offences on a single appearance: *Manasa Waqa v The State*, Criminal Appeal No. AAU0020 of 2002."
- [11] The drug offences the applicant was convicted of on pleas of guilty were separate and distinct offences, and the continuing nature of the offending was a matter of aggravation. The fact that the offences were committed in prison while the applicant was a serving prisoner, justified the imposition of consecutive sentence. The overall sentence, including the fact of accumulation, properly reflects the totality of the criminality involved.

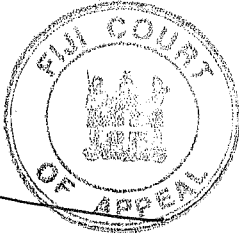
[12] I am satisfied that the applicant has shown no good cause for the delay and that there is no merit in the appeal.

Result

[13] The application to appeal out of time is refused.

[14] Leave to appeal against sentence is refused.


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Daniel Goundar
JUDGE OF APPEAL



At Suva
Friday 18th July, 2008

Solicitors:

In Person for the Applicant
Office of the Director of Public Prosecutions, Suva for the State