

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

APPELLATE JURISDICTION

CRIMINAL APPEAL NO.: AAUOO42 OF 2008
(HIGH COURT CRIMINAL ACTION NO.: HAC 119 OF 2006)

BETWEEN:

OSEA TUI

-APPLICANT-

AND:

THE STATE

-RESPONDENT-

Counsel: **Applicant in Person**
 Mr. P. Bulamainavalu for the State

Date of Hearing: **Wednesday 28th May, 2008**

Date of Ruling: **Monday 30th June, 2008**

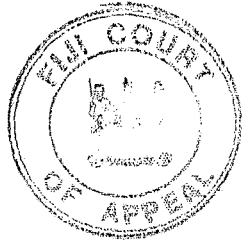
R U L I N G

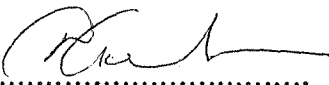
- [1] This is an application to appeal against sentence out of time. In his written application, the applicant advanced grounds to appeal against conviction but, at the hearing he only pursued an appeal against sentence.
- [2] On 16th August, 2007 the applicant was sentenced to a term of 4 years and 4 months imprisonment on a count of being in unlawful possession of 1,338.3 grams of cannabis sativa, an illicit drugs, contrary to Section 5(a) of the Illicit Drugs Control Act, 2004.
- [3] The application to appeal was filed on 22nd April 2008, by which time the appeal was out of time by 8 months. Appeals to the Court of Appeal must be filed within

30 days from the date of the decision appealed from (see, s. 26 of the Court of Appeal Act). Further, leave is required to appeal against sentence (s. 21(1) (c) of the Court of Appeal Act).

- [4] To succeed in this application, the applicant must demonstrate good cause for the late filing of the appeal, the merits in the appeal, and the absence of prejudice to the State (see, *State v Patel* Criminal Appeal No. AAU0002 of 2002S).
- [5] The reason advanced by the applicant for the delay is that he was not aware of the time limit on the filing of an appeal.
- [6] The applicant in his own words has advanced a number of grounds of appeal.
- [7] The gist of complaint against sentence is that, firstly, the learned Magistrate failed to take into consideration his personal circumstances, and secondly, the disparity in sentences arising from an unrelated case.
- [8] The learned Magistrate gave due consideration to all the mitigating and aggravating factors before arriving at a term of 4 years and 4 months. I cannot find any error in the learned Magistrate's reasoning and the sentence is neither manifestly excessive nor wrong in principle.
- [9] As far as the parity principle is concerned, the identification of unrelated cases, with different objective and personal circumstances, provides only limited assistance in terms of setting the tariff. The parity principle, as it applies to co-offenders in a sense that the sentences are so disproportionate as to leave the offender with the larger sentence with a justifiable sense of grievance, does not apply in such a situation.
- [10] I am satisfied that the applicant has shown no ground for the delay in bringing this application. I am also satisfied that, even if leave were to be given, there is no chance of success in the appeal.

[11] The application is refused.




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Daniel Goundar
JUDGE OF APPEAL

At Suva
Monday 30th June, 2008

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