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IN THE FIJI COURT OF APPEAL

SUVA, FIJI ISLANDS

APPELLATE JURISDICTION

Criminal Appeal No. AAU 0001 of 2010

[HAC 126/06]

BETWEEN: JONI RAVUGA

Applicant

AND: THE STATE

Respondent

Coram: Fernando JA

Counsel: For Appellant - In Person

For Respondent - Ms. S. Puamau

Date of Hearing: 02nd March 2010

Date of Ruling: 21st May 2010

RULING

This is an application made for leave to appeal against the conviction and sentence imposed on the applicant by the High Court Suva on 18th December 2009.

The applicant was convicted by the Learned High Court Judge on his own plea of guilty on 27th December 2009 on one count of Robbery with violence and one count of unlawful use of a motor vehicle. He was sentenced to 6 years imprisonment on count No.1 and 3 months imprisonment on count no 2 to run concurrently.

Summarily he appeals on the following grounds;

1. That his plea was equivocal
2. The sentence was manifestly excessive.
3. The disclosures show that there was sufficient evidence against his co-accused, and he cannot understand why a nolle prosequi was entered against them.

The applicant was originally charged with the co-accused and later nolle prosequi was entered against the other accused and on amended information only the applicant was charged on 21st February 2008.

The applicant questions as to why nolle prosequi was entered against the co-accused when there is sufficient evidence against them. Further he states he feels that it must be served with Fairness and Justice.

DPP entered Nolle Prosequi against other co-accused and decided to proceed against the applicant.

In *Matalulu v. DPP* [2003] FJSC 2; [2003]4 LRC 712 (17 April 2003) Supreme Court found that where the DPP decides to discontinue a prosecution on the basis of a mistaken view of the law then, by

definition, there is no court proceeding within which that view can be tested and it may be a stronger case for review can be made.

With regard to the DPP's decision to continue prosecutions the court said. "A mistaken view of the law upon which the proposed prosecution is based will not constitute a ground for judicial review in connection with the institution of a prosecution. The appropriate forum for determining the correctness of the prosecutor's view is the court in which the prosecution is commenced".

In this case the applicant pleaded guilty to the charges in the information. Hence the ground no 3 is with out merit.

It is submitted by the applicant that his plea was equivocal. In that he says that he was arrested on the bench warrant on 26th November 2009 and Constable Epeli of Samabula Police Station told the applicant to change his plea, otherwise the applicant would provoke the Court. Further he says that that he had no legal representation and that the court should have directed a legal representative as he is a first offender and considering the seriousness of the offence and the penalty he would receive.

Although the plea was taken on 27th November 2009 after he was produced before court on the bench warrant, the case was adjourned till 4th December 2009 to enable the prosecutor to prepare the summary of facts. It is mentioned in the sentencing judgment of the Learned High Court Judge that right to counsel was put to the applicant and he waived the same and opted to defend

himself. Further it is mentioned that it was out of his own free will. When the case was adjourned for the summary of facts for one week till 4th December 2009 accused had ample time to further think about it before admitting the summary of facts on 4th December 2009. After one week applicant still admitted the summary of facts and he was convicted. Therefore I find that the High Court has given the rights of an unrepresented accused to the applicant and the submission of the applicant on that ground cannot be accepted

The applicant submits that there was no sufficient evidence to convict the applicant. Applicant pleaded guilty to the charges in the information and admitted the summary of facts which reflected the elements of the offences as stated in the sentencing judgment.

In the Case of **Koro v. State** [2008] FJCA17 AAU0028.2008 (14 May 2008) it was said in paragraph 5.16.

That once pleaded guilty to the charge and summary of facts admitted these together constituted the clear and direct evidence as to the proof of the offence. All elements of the offence are covered.

The respondent (state) in their submission filed on 02.03 2010 in paragraph 43 states that the applicant appears to be complaining that having always made a not guilty plea, it was wrong of the court to require him to take another plea. Further it is submitted that the State concedes that this is a question of law alone and that they concede that the applicant has a right of appeal to the Court of Appeal on this ground of appeal against conviction.

This submission of the respondent cannot be accepted for following reasons.

The applicant was originally charged with other co-accused for which information he pleaded not guilty. Then applicant absconded from appearing in court for more than 2 years and bench warrant was issued and within which period the amended information was filed. Therefore at the time the applicant was arrested and produced the amended information which was filed has to be read to him for his plea because he had pleaded not guilty to the original information and not to the amended information. Further the applicant cannot be allowed to say that he could not resist to the amendment as he was on his own absconding and was on bench warrant.

Therefore the court is required to take another plea on the amended information and the position of the applicant and of the respondent cannot be accepted on this ground and this cannot be considered a question of law alone.

Now I will deal with the leave to appeal application on sentence.

On sentence the applicant submits that court has not considered the early plea of guilty and that he is a first offender. In his sentencing judgment the learned High Court Judge in paragraph 8 has well considered both these mitigation factors and for the mitigating factors he has decreased 7 years.

Robbery with violence offence carries a maximum term of life imprisonment and this shows how serious the legislature has considered this offence. This is a home invasion. The learned High Court Judge has considered all the sentencing authorities relevant when arriving at the sentence of 6 years imprisonment. Further the sentence is well within tariff. In case of *Sakusa Basa v. The State* it was said;

11] This was a planned joint enterprise in which the various participants took different parts within the overall plan. Although the appellant was the driver he clearly knew the plan and is as responsible for it as others. The learned judge was justified in fixing starting point at 8 years on the basis of overall offence.....

I find the sentence is appropriate in all the circumstances in this case.

For the above reasons I decline the applicant's application for leave to appeal to the Full Court.



Priyantha Fernando
Judge of Appeal

