

IN THE COURT OF APPEAL
AT SUVA

CRIMINAL APPEAL NO. AAU 20 OF 2014
(High Court HAA 4 of 2013)

BETWEEN : TOKIA TEANGMATE
Appellant

AND : THE STATE
Respondent

Coram : Hon. Justice Suresh Chandra

Counsel : Mr. J. Savou for the Appellants
Mr. P. Madanavosa for the Respondent

Date of Hearing : 12 June 2015

Date of Ruling : 2 March 2016

RULING

1. This is an application seeking extension of time within which to appeal against sentence.
2. The Applicant was convicted by the Magistrate's Court of Savusavu with extended jurisdiction of the offence of "Act Intending to Cause Grievous Harm" contrary to Section 255(a) of the Crimes Decree, 2009 on his pleading guilty and was sentenced to 4 years imprisonment with a non parole period of 2 years on 19th February 2013.

3. The Applicant had first appeared before the Magistrate's Court on 19th March 2012 and the matter had been remitted to the High Court as it was an indictable offence. The Applicant had indicated his wish to enter a guilty plea on that occasion.
4. The High Court had extended the jurisdiction of the Magistrate's Court on 26th March 2012 and he had been enlarged on bail on 17th April 2012.
5. As the Applicant had not answered bail, a bench warrant had been issued and he was arrested and produced on 22nd November 2012.
6. On 20th December 2012 he had been granted bail and he had entered a plea on the 19th of February 2013.
7. He had appealed within time to the High Court in Labasa, which appeal was dismissed for want of jurisdiction.
8. The Applicant filed his appeal in the Fiji Court of Appeal on 11th November 2013 by letter dated 8th October 2013 and by notice of motion dated 26th February 2015 the Applicant sought:
 - a. An extension of time within which to appeal;
 - b. Leave to file amended application for leave to appeal;
9. The Appellant on being assisted by the Legal Aid Commission filed his amended application for leave wherein the following grounds of appeal were set out:
 1. The learned Magistrate erred in law and in principle when he chose a starting point of 6 years that was beyond the accepted tariff for this offence or similar offence without any appropriate justification.
 2. The learned Magistrate erred in law and in fact when he did not state and justify when he added 2 years for the aggravating factors.
 3. The learned Magistrate erred in law when he did not give appropriate discount of the appellants' early guilty plea.

4. The learned Magistrate erred in law when he did not deduct the 5 months period that the appellant was in remand custody.

10. In **Kamlesh Kumar v State**, Criminal Appeal No.CAV 0001/09 (21st August 2012) the Supreme Court laid down the following factors that have to be examined in respect of an application for leave seeking extension of time:
 - (i) The reason for the failure to file within time;
 - (ii) The length of the delay;
 - (iii) Whether there is a ground of merit justifying the Appellate Court's consideration;
 - (iv) Where there has been substantial delay, nonetheless is there a ground of appeal that will probably succeed? and
 - (v) If time is enlarged, will the Respondent be unfairly prejudiced?

11. In the written submissions of the Respondent, it has been submitted that the delay in filing the application should not prevent the applicant from having his claim from being considered as it is clearly of substantial merit.

12. The record shows that the Applicant had made a timely appeal soon after he was sentenced but to the wrong Court, namely the High Court which had dismissed same for want of jurisdiction. However, his subsequent attempt to file a proper appeal had failed as he had filed a letter dated 20th April 2013 appealing to the Court of Appeal by filing it in the Labasa High Court Registry. It is thereafter he had been able to get the assistance of the Legal Aid Commission to file the present application seeking extension of time for leave to appeal.

13. These circumstances by themselves merit consideration regarding the delay in filing a proper appeal.

14. In considering whether the application has merit it is necessary to see the manner in which the applicant has been sentenced.

15. The learned Magistrate selected a starting point of 6 years when the tariff was between 6 months and 5 years, which clearly was a high starting point and therefore is a matter that is arguable.
16. It has also been submitted that the learned Magistrate added two years for aggravating circumstances without stating what the aggravating factor was which again is a matter that is arguable. When the high starting point was adopted by the learned Magistrate it is arguable whether there was double counting when two years were added for aggravating factors.
17. The other submission on behalf of the Applicant is that the learned Magistrate has not given a proper discount for his early guilty plea. The learned Magistrate has deducted two years in that respect which would be slightly less than the exact one third discount from the total sentence of 8 years. If the Applicant succeeds on the first two grounds of appeal it may not be necessary to deal with this ground and the Full Court may be able to consider same.
18. As regards the next ground regarding the reduction of the period in remand, there is uncertainty of the exact period in remand. According to the Applicant it is 5 months, while it is 2 months according to the Respondent. In any event, this period has not been discounted by the learned Magistrate when sentencing the Applicant and therefore this ground is arguable.
19. The application of the Applicant seeking extra time has not caused any prejudice to the Respondent, as the Respondent has submitted that there is merit in the application of the Applicant.
20. In the above circumstances as the application of the Applicant has merit leave is granted to the Applicant.

Orders of Court:

Application of the Applicant for extension of time is granted.



A handwritten signature in black ink, appearing to read "Suresh Chandra", is written over a horizontal line.

Hon. Justice Suresh Chandra
RESIDENT JUSTICE OF APPEAL