

IN THE HIGH COURT OF FIJI

AT SUVA

APPELLATE JURISDICTION

CRIMINAL APPEAL CASE NO. HAA 036 OF 2014S

BETWEEN

AMINIASI DANFORD

APPELLANT

AND

THE STATE

RESPONDENT

Counsels : Mr. P. Tawake for Appellant
Ms. D. Kumar for Respondent
Hearing : 1 June, 2015
Judgment : 29 April, 2016

JUDGMENT

1. On 24 January 2014, the appellant (accused) appeared in the Navua Magistrate Court on the following charge:

Statement of Offence

BREACHING BAIL CONDITIONS: Contrary to Section 26 (1) of Amendment to the Bail Act 2002.

Particulars of Offence

AMINIASI DANFORD, on the 18th day of January, 2014, at Navua in the Central Division, without reasonable cause breaches the conditions of bail imposed by the Navua Magistrate Court that he had to report in at Navua Police Station between 9 am to 6 pm vide CF 01/13 and 04/13.

2. The charge was read and explained to the appellant, and he said, he understood the same. He waived his right to counsel, and pleaded guilty to the charge. The police summary of facts was read to him, and he said he understood the same. He admitted the same. He basically admitted the particulars of offence. He was found guilty as charged and convicted accordingly.
3. The appellant made a verbal plea in mitigation. He said he was 36 years old, married with 2 children and a farmer by profession. He said, he grows food crops and vegetables and earns about \$100 per week. He said, he forgot to report to the police once. He asks for forgiveness.
4. On 14 April 2014, the Navua Magistrate Court delivered a written sentence on the Appellant. The court sentenced him to 6 months imprisonment.
5. The appellant was not happy with the above sentence. He filed the following appeal grounds:
 - “...1. **THAT** the Learned Trial Magistrate erred in law in treating the Appellant’s –
 - (i) Previous convictions; and
 - (ii) Pending criminal cases as an aggravating factor in sentence.
 2. **THAT** the Learned Trial Magistrate erred in law and principle in failing to reduce the Appellant’s sentence by a third for his early guilty plea.
 3. **THAT** the Learned Trial Magistrate erred in law and principle in failing to discount the Appellant’s early guilty plea after the mitigation and aggravating factors have been accounted for...”
6. In dealing with the above appeal grounds, I will deal with ground 2 and 3 together, because they involved the same issue.

Appeal Ground No. 1:

7. I have carefully read and considered the court record, the Learned Magistrate’s sentencing remarks on 19 March 2014, and the parties’ written submissions. The State had conceded this ground of appeal. Previous convictions and pending criminal cases against an accused person are not to be treated as aggravating factors, when it comes to sentencing. Only if it was authorized by legislation, then you can look at this matters. This appeal ground succeeds.

Appeal Grounds No. 2 and 3

8. These appeal grounds involved the same issue, that is, the reduction in sentence that must be given for an early guilty plea. In this case, the accused pleaded guilty on the first call on 24 January 2014; thus is entitled to a reduction in sentence. Whether or not it should be a 33% discount or other discount, is for the sentencing Magistrate to consider, after considering all the relevant factors and the surrounding circumstances. There is no concrete rule that it should be a one third discount. The superior court authorities are still not settled on this point. The discount to be given is at the discretion of the Learned sentencing Magistrate. The Learned Magistrate gave a 2 months discount for the accused's early guilty plea. He had not erred. This ground of appeal fails.

New Sentence:

9. The Learned Magistrate started with 6 months imprisonment. There appeared to be no aggravating factors. For the guilty plea, the Learned Magistrate gave a 2 months discount. That would leave 4 months imprisonment. This is the new sentence.

Conclusion:

10. The appellant's appeal against sentence succeeds, in that the previous 6 months prison sentence is quashed, and substituted with a 4 months prison sentence, effective from 19 March 2014. I rule so accordingly.




Salesi Temo
JUDGE

Solicitor for Appellant : Legal Aid Commission, Suva.
Solicitor for Respondent : Office of the Director of Public Prosecution, Suva.