IN THE HIGH COURT OF FIJI
AT LAUTOKA
APPELLATE JURISDICTION

CRIMINAL APPEAL NO. HAA 83 OF 2017

BETWEEN : **MERE VULA**

APPELLANT

A N D : **THE STATE**

RESPONDENT

Counsel	:	Ms. K. Vulimainadave for the Appellant.
	:	Mr. T. Qalinauci for the Respondent.
Date of Hearing	:	19 December, 2017
Date of Judgment	:	20 December, 2017

JUDGMENT

Background Information

1. The Appellant was charged with one count of giving false information to public servant contrary to section 201 (a) of the Crimes Act and one count of breach of suspended sentence contrary to section 28(1) (2) and 26 of the Sentencing and Penalties Act.

2. For count one it was alleged that on the 23rd day of March, 2017 the Appellant gave false information to WDC 3126 Julia Tauwai, a public

servant information namely an interview statement that her name was Atelini Rawana of Vuci, Nausori knew to be false knowing it to be likely that she will thereby cause WDC 3126 Julia Tauwai to interview the said Atelini Rawana which WDC 3126 Julia Tauwai would have done had WDC 3126 Julia Tauwai known the true state of facts.

3. For count two it was alleged that on the 21st day of January, 2017 the Appellant breached the suspended sentence order of 3 months imprisonment which was suspended for 2 years vide Suva Cf: 675/14 given to her on the 10th day of August, 2015 by committing other offences namely Theft.

4. The Appellant pleaded guilty to the two counts when she appeared in court.

SUMMARY OF FACTS

5. The following summary of facts was admitted by the Appellant.

"On the 23rd day of March, 2017 at about 7.30pm at Sigatoka Police Station one Mere Vula (B-1) 35 yrs D/D of Narere, Suva, gave false name to a Police Officer, namely WDC Julia Tauwai (A-1) 38 yrs, Police Officer of Sigatoka Police Station.

On the above date, time and place (A-1) was interrogating (B-1) and enquired (B-1) of her name as registered in her birth certificate. (B-1) stated that her name was Atelini Rawana. Later (B-1) was formally charged with the same name, Atelini Rawana. (B-1) was produced to court and was convicted. (B-1)'s warrant was handed over to the Sigatoka Police stating (B-1)'s name as Atelini Rawana vide warrant number 87/17. (B-1) gave false information as she knew she was on a suspended sentence.

(B-1) was transferred to the Women's Prison in Korovou and the Prison Officers identified her as Mere Vula therefore rejected her and sent (B-1) back to CPS cell block. (B-1) was arrested and brought to Sigatoka Police Station whereby (B-1) was interviewed under caution and admitted as in question no's 21, 22, 23 and 24.

(B-1) was on a suspended sentence vide CF 675/14 where she was given a 3 months' imprisonment which was suspended for 2 years by the Suva M/C on 10/8/15, when she committed the offence."

6. The Appellant admitted the summary of facts after it was read to her. After hearing mitigation the Magistrate's Court sentenced the Appellant on 28th April, 2017 as follows:
   (a) Count one - six months imprisonment;
   (b) Count two - three months imprisonment;
   (c) Both counts were to be served consecutively.

7. Since the Appellant was already serving a term of imprisonment of 9 months the sentence of 9 months imprisonment in this file was made consecutive to her existing term of sentence.

8. The Appellant being dissatisfied with the sentence filed a timely appeal against sentence which was later amended by the legal aid counsel who now appears for the Appellant.

9. The amended grounds of appeal are as follows:

   "1. The learned Magistrate erred in law and in principle when he did not take into account the totality principle.

   2. The learned Magistrate erred in law and in principle when he failed to justify the imposition of a consecutive sentence considering the circumstances of the Appellant.

3. *The sentence of 9 months imprisonment to be served consecutively to her current term is harsh and excessive."*

10. Both counsel have filed written submissions and also made oral submissions during the hearing for which the court is grateful.

LAW

11. In sentencing an offender the sentencing court exercises a judicial discretion. An Appellant who challenges this discretion must demonstrate to the Appellate Court that the sentencing court fell in error whilst exercising its sentence discretion.

12. The Supreme Court of Fiji in *Simeli Bili Naisua vs. The State, Criminal Appeal No. CAV0010 of 2013 (20 November 2013)* stated the grounds for appeal against sentence at paragraph 19 as:-

"It is clear that the Court of Appeal will approach an appeal against sentence using the principles set out in House v The King [1936] HCA 40; (1936) 55 CLR 499 and adopted in Kim Nam Bae v The State Criminal Appeal No. AAU0015 at [2]. Appellate Courts will interfere with a sentence if it is demonstrated that the trial judge made one of the following errors:-

(i) Acted upon a wrong principle;

(ii) Allowed extraneous or irrelevant matters to guide or affect him;

(iii) Mistook the facts;

(iv) Failed to take into account some relevant consideration."

13. The counsel for the Appellant argues that by making the term of imprisonment in this file consecutive to the existing term of imprisonment the Appellant will be serving a total of 18 months imprisonment. This, according to counsel offends the totality principle of sentencing resulting in excessive sentence. Furthermore, counsel also submits that no justified reasons were given by the learned Magistrate when he made the sentence in this file consecutive to the existing sentence.

TOTALITY PRINCIPLE

14. The totality principle of sentencing is a recognised principle of sentencing formulated to assist a court when sentencing an offender for a number of offences.

15. In *Mill v The Queen [1988] HCA 70* the High Court of Australia in its judgment cited D.A. Thomas, Principles of Sentencing (2nded. 1979) pp. 56-57 as follows:

"the effect of the totality principle is to require a sentencer who has passed a series of sentences, each properly calculated in relation to the offence for which it is imposed and each properly made consecutive in accordance with the principles governing consecutive sentences, to review the aggregate sentence and consider whether the aggregate is 'just and appropriate'. The principle has been stated many times in various forms; 'when a number of offences are being dealt with and specific punishment in respect of them are being totted up to make a total, it is always necessary for the court to take a last look at the total just to see whether it looks wrong'; "when ... cases of multiplicity of offences come before the court, the court must not content itself by doing the arithmetic and passing the sentence which the arithmetic produces. It must look at the totality of the criminal behaviour and ask itself what is the appropriate sentence for all the offences'."

16. In Fiji, the above principles have been approved and applied by the court (see *Tuibua v The State, [2008] FJCA 77, Taito Raiwaqa v The State, [2009] FJCA 7)* and *Asaeli Vukitoga v The State, Criminal Appeal No: AAU 0049 of 2008.*

17. I agree that the learned Magistrate whilst making the sentence in this file consecutive to the Appellant's existing term of imprisonment did not give any reason why he made the sentences consecutive. It is a good sentencing practice for a sentencing court to give a reason why a sentence has been made consecutive. When one looks at the circumstances and the seriousness of the offences committed by the Appellant the failure by the learned Magistrate to give a reason does not affect the consecutive sentencing. The totality of the Appellant's criminal behaviour is such that the total sentence of 18 months imprisonment is an appropriate sentence for all the offences committed.

18. I also note that the learned Magistrate did not consider count one (giving false information to public servant) as an aggravating factor (see *The State vs. James Ashwin Raj, HAC 041 of 2012*). The Appellant's culpability is obvious in the offending which appears to have been a result of much planning. In this regard the Appellant is lucky that her sentence was not enhanced.

19. The Appellant had committed serious offences whilst serving a suspended sentence whose operational period had not ended. According to the summary of facts admitted by the Appellant she had deliberately given a false name to avoid detection since she was already on a suspended sentence. The Appellant had succeeded until a Corrections Officer recognised her when she was presented at the Corrections Centre on a warrant issued by the Magistrate's Court after her sentence in criminal case no. 167 of 2017.

20. The learned Magistrate had correctly taken into account the purposes of sentencing as mentioned in section 4 (1) of the Sentencing and Penalties Act and the considerations to be given when sentencing the Appellant. The consecutive sentences do not have a crushing effect on the Appellant which is just in all the circumstances of the offending.

21. The Appellant has not been able to demonstrate any errors made by the learned Magistrate in the exercise of his sentencing discretion. The sentence of 18 months imprisonment properly reflects the crimes committed by the Appellant which meets the sentencing guidelines of the Sentencing and Penalties Act.

22. Any reduction of the sentence imposed by the learned Magistrate would fail to deter offenders or other persons from committing offences of the same or similar nature and will also fail to signify that the court and the community denounce the commission of such offences.

23. The appeal is dismissed due to lack of merits.

ORDERS

1. The appeal against sentence is dismissed.
2. 30 days to appeal to the Court of Appeal.

HIGH COURT OF FIJI LAUTOKA

Sunil Sharma
Judge

At Lautoka
20 December, 2017

Solicitors

Office of the Legal Aid Commission, Sigatoka for the Appellant.

Office of the Director of Public Prosecutions for the Respondent.