

**PHILIP SOLODIA -V- REGINA**

High Court of Solomon Islands  
(Faukona J)

Criminal Case No. 147 of 2006

Date of Hearing: 12<sup>th</sup> March 2007

Date of Judgment: 15<sup>th</sup> March 2007

C. Ashley for the Applicant

M. Unagi for the Crown

**RULING**

**Faukona J:** What could have appeared to be an appeal against conviction and sentence imposed by the Magistrate Court, Central, on 31<sup>st</sup> March 2006, turn out to be an application for bail pending appeal. Mr Charles Ashley counsel for the applicant had abandoned the appeal because of the court transcripts from Magistrates Court are not available, therefore, he would not be in a position to proceed with the appeal. However, he substituted the appeal process, and instead filed a bail application on the very morning the case was listed for hearing. The counsel for the applicant informed me in Court that the appeal will be postponed until relevant time, and would proceed with the bail application instead.

The applicant was found guilty by the Magistrates Court on 31<sup>st</sup> March 2006 on two counts of unlawful Commercial Gambling and Simple Larcency. On Count 1 the applicant was fined \$1,500.00, and on Count 2 he was jailed for two and half years. By 31<sup>st</sup> March 2007 the applicant would have served one year in prison.

Against the conviction and sentence the Counsel filed an appeal on 13<sup>th</sup> April 2006. Pending the hearing of the appeal, the applicant now applies to be granted bail.

The bail application is being brought under section 290 of the CPC. This section states:

“(1) Where a convicted person presents or declares his intention of presenting a petition of appeal, the High Court or the Court which convicted such person may, if in the circumstances of the case it thinks fit, order that he be released on bail with or without sureties, or if such person is not released on bail shall, at the request of such person, order that the execution of the sentence or order against which the appeal is pending be suspended pending the determination of the appeal. If such order be made before the petition of appeal is presented and no petition is presented within the time allowed the order for bail or suspension shall forthwith be cancelled.

- (2) .....
- (3) .....

This section gives the right to a person being convicted of an offence and wishes to appeal his conviction or sentence, may apply for bail pending hearing of the appeal. At the same time this section gives discretionary power to the Court to determine whether to grant or refuse bail.

In *Susan Tamana –v- Regina*<sup>1</sup> Muria CJ pointed out on page 7 paragraph 3, the position in this jurisdiction is that an application must show that there are matters which constitute exceptional circumstances before bail is allowed pending appeal. He also refer to *Enito –v- Regina* where the Court pointed out the conditions to be satisfied before bail can be granted pending appeal. They are:-

- (a) there is a possibility that a sentence of imprisonment be set-aside entirely; or
- (b) the sentence is likely to be served completely before the appeal is heard; or
- (c) there are exceptional reasons. This last criteria of exceptional reasons or exceptional circumstances must be those of the case and not of the applicant.

In opposing the application the Counsel for the Crown refer to the above two cases and submitted that before bail can be granted the Court must be satisfied on the above conditions as matters of exceptional circumstances. Delay caused by not receiving transcript from the Magistrates Court is not an exceptional circumstances.

In an attempt to satisfy the first condition the Counsel for the applicant refer to the case of *Billy Emelio Fili –v- Regina* where His Lordship reduce the sentence of twelve months to six months imprisonment with three months suspended. The offence is one of fraudulent conversion. The Counsel also compare the maximum sentence for conversion and simple larceny which is two years longer than seven years for conversion. There are other cases referred to as guideline before His Lordship arrived at the sentence he considered appropriate.

The Counsel for the applicant is in fact anticipating a successful outcome of the applicant's appeal. He foresees the probable outcome and contemplated that the sentence will be lowered from two and half years imprisonment based on the above case. He also suggested, that it is logic, should the applicant bail now, he will not serve extra time if the Court reduces the sentence.

Comparative sentences are but imprecise guide, for that the circumstances of each case fall to be determined on their own facts and should reflect the views of the community, not only previous Judges sentence awards. A similar sentiment is also echoed in the case of *Billy Emelio –v- Regina*<sup>2</sup>. His Lordship Palmer CJ states in para.5

“circumstances of the case and offender vary from case to case and although useful guideline can be obtained in the process, each case has to be considered in its merits.”

At the meantime, it is still premature to anticipate or foresee the likelihood of a possible sentence on appeal. That should wait until the appeal is heard. Though charges may be the same or similar, circumstances of each case and offender varies and this require different approaches and different consideration, as each case be considered on its own merits.

In respect of the second condition it is submitted by the Counsel for the applicant that by 30<sup>th</sup> March 2007, the applicant would have served one year in prison. That is little bit more than one third of the entire sentence. In my view there is still sufficient time

<sup>1</sup> HC-CRC15/05, 26<sup>th</sup> June 1995 Muria CJ (Unreported)

<sup>2</sup> HCSI – CRAC 3<sup>rd</sup> May 2004 Palmer CJ (unreported).

left. Something can be done administratively to get the transcript from the Magistrates Court and set a date for hearing of the appeal.

On the third condition counsel for the applicant refer to the delay of hearing of the appeal. In fact the appeal was filed on 13<sup>th</sup> April 2006 and up until now the transcripts of evidence in the Magistrates Court is yet to be received. The file was received in September 2006 but was without any transcripts.

I agree there is a substantial delay in the administration of getting the necessary documents from the Magistrates Courts, and even after being in possession of the file, it was not checked thoroughly to ensure all necessary documents were available, before listing the appeal for hearing. I perceived that this is one typical case which should not be repeated. Administrative shortfall do often cause injustice to others, especially in this case where the appellant since 13<sup>th</sup> April 2006 expected his appeal to be heard as soon as practicable. Now he has served little bit more than one third of the sentence and perhaps he has one third more to go, the other one third is remission.

Finally the transcript has eventually being located and it is now on the typewriter. Hopefully within the next one month all typing should be done and the appeal should be ready to proceed. With that I finally decided to refuse the bail and set date for hearing of the appeal, and I order accordingly.

Hon. Justice Rex Faulkna  
Puisne Judge