

IN THE COURT OF APPEAL, FIJI ISLANDS
ON APPEAL FROM THE HIGH COURT OF FIJI

CRIMINAL APPEAL NO. AAU 42 OF 2004
(High Court Criminal Appeal No. HAC 18/2004)

BETWEEN:

ALIFERETI COKANASIGA YAYA

Appellant

AND:

THE STATE

Respondent

Coram: Tompkins, JA
Smellie, JA
Scott, JA

Date of Hearing: Friday, 11 March 2005

Counsel: Appellant in person
Mr. K. Tunidau for the Respondent

Date of Judgment: Friday, 18 March 2005

JUDGMENT OF THE COURT

- [1] The Appellant pleaded guilty in the Lautoka Magistrates' Court to one count of receiving stolen property. He was sentenced to 3½ years imprisonment. He appealed against his conviction and sentence to the High Court at Lautoka.
- [2] In his petition of appeal the Appellant complained that he was not given an opportunity to consult a solicitor while in police custody and that he was not

legally aided in the Magistrates' Court, contrary to the provisions of Sections 27 (1) (c) and 28 (1) (d) of the Constitution. He also claimed that the guilty plea was "ambiguous".

[3] In a rather too brief judgment dated 19 March 2004 the High Court (Govind J.) found that there was nothing to indicate that the Appellant's plea was equivocal; therefore Section 309 (1) of the Criminal Procedure Code (Cap. 21) applied. The Court, doubtless mindful of the record of the Magistrates' Court also noted that the Appellant represented himself and appeared fully to understand the nature of the alternative charge to which he pleaded. The record does not disclose any request for legal aid or complaint about lack of legal representation. The Appellant was not unfamiliar with Court procedures having appeared in Court on three previous occasions and having 22 previous convictions. The appeal against conviction was dismissed.

[4] The appeal against sentence was also dismissed. The Judge observed:

"a sentence of 3½ years in the circumstances of this case is neither manifestly excessive nor wrong in law."

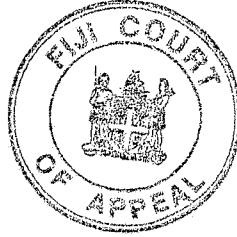
[5] On 15 September 2004 the Appellant was granted leave to file a second appeal to this Court. Such appeals are governed by Section 22 (1) (a) of the Court of Appeal Act. This provides that no appeal lies in respect of a sentence imposed by the High Court in its appellate jurisdiction unless the sentence was unlawful or passed in consequence of an error of law.


[6] In his petition to this Court the Appellant complained that the High Court was biased against him and that he was not given a fair hearing. He also suggested that the sentence was harsh and excessive.


- [7] It is unfortunate that the charge to which the Appellant pleaded did not precisely specify which subsection of Section 313 of the Penal Code was being relied upon. Section 313 (1) (a) applies where the property was received in circumstances amounting to felony, while Section 313 (1) (b) applies where the circumstances only amount to a misdemeanor. In the former case the maximum sentence which a Magistrates' Court (and therefore the High Court on appeal) can impose is 10 years imprisonment, in the latter it is seven.
- [8] The prosecution's case against the Appellant was that he had received part of the proceeds of a well planned armed robbery with violence in which \$1.3million was stolen from a security vehicle. As appears from the record, the Magistrate approached sentence on the basis that an offence contrary to Section 313 (1) (a) had been committed. In agreeing to the facts as outlined by the prosecution the Appellant must be taken to have accepted that this was so.
- [9] While a sentence of 3½ years imprisonment may be greater than sentences generally imposed for receiving stolen property the seriousness of the circumstances in which the receiving took place in this particular case clearly had to be reflected in the sentence passed.
- [10] It is unfortunate that the Appellant gained the impression that the Judge was biased against him but we think that the Judge was doing no more than expressing the general view which society takes of serious organised crime of the kind in which the Appellant was involved. We are satisfied that there was no error of law in the confirmation of the sentence imposed by the Magistrates' Court and accordingly this appeal must fail.

RESULT

Appeal dismissed.




Tompkins J.A.


Smellie J.A.


Scott J.A.

Solicitors:

Appellant in person
Director of Public Prosecutions for the State