

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

CRIMINAL APPEAL NO. AAU 0018/2005
(High Court Criminal Appeal HAA 13/2005L)

BETWEEN:

ANAND KUMAR

(f/n Sada Nand)

Appellant

AND:

THE STATE

Respondent

Coram: Ward P
Gallen, JA
Scott, JA

Date of Hearing: 27 July 2005

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

Date of Judgment: 29 July 2005

JUDGMENT OF THE COURT

[1] On 21 July 2004 the Appellant appeared in the Sigatoka Magistrates' Court where he pleaded guilty to two charges of obtaining goods by false pretences. He was sentenced to a total of six months imprisonment. Later on the same day he pleaded guilty to two other charges of obtaining goods by false pretences and was

sentenced to a further term of 12 months imprisonment. In July, August and September 2004 at Sigatoka, Nadi and Ba he pleaded guilty to additional offences of the same nature for which he received further terms of imprisonment, some consecutive, some concurrent.

- [2] The Appellant appealed against the sentences and on 18 February 2005 appeared before the High Court at Lautoka (Govind J). The record of what then occurred is:

“For the A : in person

For the State : Tunidau

Court warns has power to increase sentence and is inclined to do so.

Accused: I withdraw all my appeals”.

- [3] On 9 March 2005 the Appellant wrote to the High Court at Lautoka seeking reinstatement of his appeal. In his letter he claimed that he had been told by the Judge to withdraw the appeal. He suggested that he had been unfairly treated.
- [4] What happened next is not entirely clear, but at the foot of the Appellant’s letter of 9 March the following words have been written:

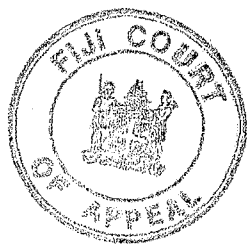
“Leave to reinstate of appeal is dismissed – 6/4/05.”

- [5] On 22 March 2005 the Appellant filed a Petition of Appeal to this Court in which he complained about the way in which his appeal to the High Court had been dealt with. On 6 June 2005 he was given leave to appeal.
- [6] Both the Appellant and the State filed written submissions upon which they relied. Mr. Tunidau stressed that the Appellant, who has 80 previous convictions, was no stranger to the Court. He submitted that the warning given by the Judge could not be taken to indicate that he had already made up his mind to increase the sentences.
- [7] Under Section 319 (2) of the Criminal Procedure Code (Cap. 21) the High Court, on the hearing of an appeal by an appellant against severity of sentence has power to increase the sentence, if it takes the view that the sentence was in fact too lenient.

[8] In Christina Doreen Skipper v. Reginam (Cr. App. 70/1978) this Court explained that before enhancing sentence, the Court should first warn the Appellant that it had the power to do so and should give the Appellant an opportunity to make representations.

[9] When a Court is advertng to its power under Section 319 (2) there is always a risk that the impression may be given that the Court has already decided to enhance. The words of the warning must therefore be carefully chosen in order to avoid giving this impression. In our view, the words of the Judge as recorded on this ocassion may arguably be taken to indicate that a decision to increase, were the Appellant to proceed with his appeal, had already been taken. As already noted, after the warning was given, the Appellant withdrew his appeal. In order to put the matter beyond doubt we remit the Appellant's appeal against the sentence imposed upon him to the High Court at Lautoka for reinstatement and hearing.

by a different judge
[Handwritten initials and notes]



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Ward P

[Handwritten signature]
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Gallen JA

[Handwritten signature]
.....
Scott JA

Solicitor
Office of Director of Public Prosecutions, Suva.