

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

Criminal Appeal No. AAU 49/06
(High Court Criminal Appeal No. HAA 153 of 05S)

BETWEEN:

AMINIO ROKOTUIVUNA MAFUTUNA

Appellant

AND

THE STATE

Respondent

JUDGMENT

- [1] On 18 November 2002 the Appellant was charged with one count of robbery with violence. It was said that the Appellant and another man had assaulted the complainant who was a taxi driver and that the Appellant had then stolen a car stereo and the taxi meter.
- [2] After no less than twenty four adjournments, on 14 September 2005 the Appellant and his co-accused appeared in the Suva Magistrates' Court before Salesi Temo RM. According to the record, the court explained to the Appellant that he had a right to be represented by counsel but that the Appellant agreed to waive his right. The Appellant also asked to have the matter disposed of in the Magistrates' Court. The charge was then read and explained to the Appellant who is recorded as understanding the charge against him. He then pleaded guilty and the facts

were read out. According to the record, the Appellant agreed with the facts and then told the court:

"I admit that I was part of the group that violently robbed the complainant of his property mentioned in the charge."

He was then formally convicted.

- [3] The Appellant who had four previous convictions including house breaking, entry and larceny, burglary and larceny from the person was sentenced to three and half years imprisonment.
- [4] The Appellant appealed against his conviction and sentence to the High Court. He maintained that his plea in the Magistrates' Court was equivocal in that he was induced to plead guilty by an assurance given to him that the taxi driver was ready to reconcile with him. The High Court rejected that submission, pointing out that there was no mention of any reconciliation during the proceedings in the Magistrates' Court and that in any event, robbery with violence is not a reconcilable offence. The record plainly reveals that the Appellant unreservedly pleaded guilty to the charge and accepted the facts as outlined. That this outlining of the facts was no mere formality appears from the change of plea that was entered by the Resident Magistrate in respect of the second accused after he had disagreed with the facts which were read out. The appeal against conviction was dismissed.
- [5] The High Court also dismissed the appeal against sentence. The offence which had been committed by the Appellant was

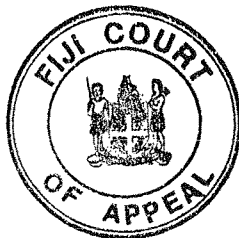
described as a "more serious type of robbery" while the sentence imposed upon the Appellant was "already below the tariff".

- [6] On 21 August 2006, over five months after his appeal was dismissed by the High Court, the Appellant filed the present appeal to this Court. The appeal period expired on 3 April 2006 and therefore this must be regarded as an application for leave to appeal out of time.
- [7] The Appellant filed seven grounds of appeal. He again claimed that his guilty plea in the Magistrates' Court was only entered under pressure. He also claimed that the summary of facts did not accurately describe what had actually occurred, that he was a victim of a "travesty of justice" and that the sentence imposed upon him was harsh and excessive.
- [8] This being a second appeal, the Appellant's rights of appeal are governed by Section 22 (1) and (1A) of the Court of Appeal Act. An appeal against conviction only lies where a question of law only is involved. There is no right of appeal against a sentence confirmed by the High Court unless the sentence was "unlawful or was passed in consequence of an error of law".
- [9] After hearing the Appellant, the High Court dismissed the claim that his guilty plea was equivocal. This was a straightforward determination of facts by the High Court and no question of law is involved. The assertion that the facts which the prosecutor placed before the Court were not accurate is met by the Appellant's recorded agreement with those facts after they had been read out. The facts described a robbery with violence

carried out by the Appellant. There is no question of law alone raised by this assertion by the Appellant.

[10] There is nothing at all to suggest that the sentence confirmed by the High Court was unlawful or passed in consequence of an error of law.

[11] In my opinion the matters complained of by the Appellant do not give rise either to an appeal against conviction or to an appeal against sentence. In these circumstances leave to appeal out of time is refused.



A handwritten signature in black ink, appearing to read "M.D. Scott".

M.D. Scott
Resident Justice of Appeal

12 September 2006