

IN THE COURT OF APPEAL, FIJI ISLANDS
AT SUVA

APPELLATE JURISDICTION

CRIMINAL APPEAL NO. AAU0096 OF 2007

BETWEEN : LIONEL THOMEN *Appellant*

AND : THE STATE *Respondent*

BEFORE THE HONOURABLE JUDGE OF APPEAL MR
JUSTICE JOHN E. BYRNE

Counsel : Appellant - In Person
: Ms A. Driu for the Respondent

Date of Hearing
& Ruling : 23rd January 2008

R U L I N G

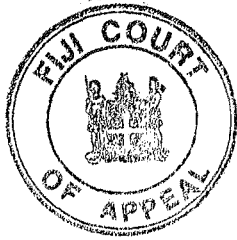
[1] The Appellant was convicted in the Lautoka Magistrates' Court on the 27th of July 2007. On three charges of '*Larceny*', '*Obtaining Money by False Pretences*' and '*Breach of Bail*'. He pleaded guilty to all charges and was sentenced to a total of 3 years imprisonment, being 12 months imprisonment on each of the charges. He appealed to the High Court in its appellate jurisdiction on the 6th of September 2007 when the Judge stated that

contrary to the view of the Prison Authorities that his total term of imprisonment was 3 years, the correct term was 2 years and he directed them to amend the Warrant of Commitment.

- [2] The Appellant now seeks leave of this Court to appeal against the sentence of the High Court on the ground that it was excessive. I am satisfied that this is not so and that unfortunately the Judge of the High Court misread the record of the Magistrates' Court in concluding that the sentence was 2 years and not 3. This is not supported by the record of the Magistrates' Court. Under the Bail Act No. 26 of 2002 a person who has been released on bail and who fails without reasonable cause to surrender to custody commits an offence and is liable on conviction to a fine of \$2,000 and 12 months imprisonment. The burden is on the Defendant to prove that he or she had reasonable cause for failing to surrender to custody.
- [3] The Appellant informed the Magistrate's Court that he was employed as a labourer with a construction company in Sigatoka and could not afford to travel from Sigatoka to Lautoka for his appearance on the 19th of January 2007. The Magistrate did not accept this explanation and

sentenced him to the maximum imprisonment provided by the Act.

- [4] In this I consider he erred and that in the circumstances a maximum sentence of 3 months would have been justified. Like the Judge of the High Court I consider that the sentences of 12 months on each of the charges of '**Larceny**' and '**Obtaining Money by False Pretences**' were in order. The only question remaining is that of the sentence for '**Breach of Bail**'. In my judgment the most appropriate course is to revise the sentence of the Magistrates' Court of 12 months and substitute for it a sentence of 3 months imprisonment to be served concurrently with the sentences on the other two charges. In this way I believe justice will be done.
- [5] The order of this court therefore is that **Leave to Appeal** against the decision of the High Court is refused but that a sentence of 3 months imprisonment for the offence of '**Breach of Bail**' is to be served concurrently with the total sentences of 2 years imposed by both the Magistrates' Court and by the High Court. I direct that a Warrant of Commitment for 2 years be issued. The sentence will run from the date of conviction in the Magistrates' Court namely the 27th of April 2007. There will be orders accordingly.



John E. Byrne

[John E. Byrne]

JUDGE OF APPEAL

At Suva

23rd January 2008