

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

CRIMINAL APPEAL NO. AAU0059 OF2006S
(High Court Criminal Action No. HAC 10 of 2005S)
CRIMINAL APPEAL NO. AAU0018 OF2007S
(High Court Criminal Action No. HAC 10 of 2005)
CRIMINAL APPEAL NO. AAU0008 OF2007S
(High Court Criminal Action No. HAC 56 of 2005S)

BETWEEN: SHAKIR BUKSH
 JITOKO METUI
 ARE AMEA

Appellants

AND: THE STATE

Respondent

In Chambers: Randall Powell, Justice of Appeal

Hearing: Tuesday 4th November 2008, Suva

Counsel: Appellants in Person
 A.G. Elliott for the Respondent

Date of Judgment: Tuesday 4th November 2008, Suva

RULING

Shakir Buksh

- [1] On 3 April 2006 Shakir Buksh ("Mr Buksh") and two others were convicted of murdering a shopkeeper on 7 January 2005. They strangled him with a pink scarf when he interrupted them and a fifth person Are Amea ("Mr Amea") robbing his shop at about 5 am that morning.

[2] Mr Buksh was found in possession of goods stolen from the shop during the robbery and the evidence linked the first accused to the pink scarf. He admitted being present during the robbery but said the others coerced him into taking part.

[3] Mr Buksh sought to appeal in a document dated 3 October 2006, a typed version of which reached the Court on 3 November 2006. In a letter to the Court dated 19 August 2008 Mr Buksh wrote to the Court seeking news of his application.

[4] Section 26(1) of the Court of Appeal Act provides:

(1) Where a person convicted desires to appeal under this Part to the Court of Appeal, or to obtain leave of that Court to appeal, he shall give notice of appeal or notice of this application for leave to appeal in such manner as may be directed by the rules of Court within thirty days of the date of conviction or decision. Except in the case of a conviction involving sentence of death, the time within which notice of appeal or notice of an application for leave to appeal may be given, may be extended by the Court of Appeal.

[5] The appeal or leave appeal is six months out of time or five months if the date of the handwritten document is considered.

[6] As this court held in **Vimal Construction & Joinery Works Limited & Anor v Vinod Patel & Company Limited** [2008] CVA ABU0093 of 2006S, “litigants should not assume that leave to appeal will be given to bring or maintain appeals or other applications where those appeals or applications are out of time unless there are clear and cogent reasons for doing so it is difficult to see why “merit” of the appeal or proceeding, without more, would justify an extension of time except where the delay was minimal and no prejudice was occasioned by a respondent.”

[7] **Vimal Construction** was a civil case but the principle applies equally to criminal proceedings although in criminal matters the courts have accepted that delays of up

to three months are excusable where the appellant has been in prison and where there are difficulties in making and getting the application to the Court.

[8] In these proceedings the delay is not minimal and no good reasons are advanced for the delay. Moreover the proposed grounds appear to be hopeless.

[9] Leave for Mr Buksh to appeal out of time is refused

Jitoko Metui

[10] Jitoko Metui ("Mr Metui") was one of Mr Buksh's co-accused and like Mr Buksh he admitted being present during the robbery. The trial judge in her summing up said that the only reasonable inference to be drawn from the facts was that it was Mr Metui who actually strangled the deceased. Mr Metui's case was that he only gagged the shopkeeper and that he was making sounds and still alive when Mr Metui left the shop.

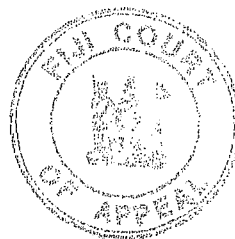
[11] Mr Metui sought to appeal in a document dated 20 January 2007, a typed version of which reached the Court on 5 February 2007. It includes a ground that the sentence was excessive and harsh in view of his "*evidence that he was not (involved) in any planning*".

[12] In these proceedings the delay is not minimal, being about 9 months, and the reasons advanced namely his lack of education and ability to prepare an appeal are not sufficient. Moreover the four proposed grounds appear to be hopeless and the fourth, namely that the sentence was excessive, is not permissible under section 21(1)(c) because the sentence for murder of life imprisonment is one fixed by law.

[13] Leave for Mr Metui to appeal out of time is refused

Are Amea

- [14] Mr Amea was involved in the robbery of the shopkeeper and was the watchman during the assault on the shopkeeper. He was not charged with murder but was charged with and pleaded guilty to armed robbery with violence. For this he was sentenced to six years in prison.
- [15] Mr Amea sought to appeal in a document dated 22 December 2006 which reached the Court on 12 January 2007. An earlier document received by the Court on 13 December 2006 sought to give reasons for delay in bringing an appeal application being lack of legal assistance, being uneducated and that being in prison *"I face a dilemma by not communicating with other prisoners to ask for assistance which resulted in the delay of the petition."*
- [16] In these proceedings the delay is not minimal, being about 8 months, and the reasons advanced namely his lack of education and ability to prepare an appeal are not sufficient. Most prisoners seem to be able to get some of application before the Court within three months, education and lack of legal assistance or not. In any event his proposed grounds of appeal, which are all to the effect that his sentence was harsh and excessive, are hopeless. Indeed if Mr Amea was permitted to appeal out of time the Court of Appeal is as likely to increase his sentence as reduce it.
- [17] Leave for Mr Amea to appeal out of time is refused



Randall Powell

Randall Powell
Justice of Appeal

Solicitors:

Appellants in Person
Office of the Director of Public Prosecutions, Suva for the Respondent