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**IN THE FIJI COURT OF APPEAL**

**SUVA, FIJI**

**CRIMINAL JURISDICTION**

[Criminal Appeal No. AAU 0028 of 2009]

**BETWEEN : SAMUEL RAM**

**APPELLANT**

**AND : THE STATE**

**RESPONDENT**

**BEFORE THE HONOURABLE  
JUSTICE OF APPEAL**

**: Mr. JUSTICE JOHN E. BYRNE**

**: APPELLANT IN PERSON**

**: S. QICA (For the Respondent)**

**Date of Hearing and  
Ruling**

**: 27<sup>th</sup> OCTOBER 2009.**

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***RULING ON APPLICATION FOR LEAVE  
TO APPEAL OUT OF TIME***

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- [1] On the 18<sup>th</sup> of December 2008 the appellant was convicted in the First Class Magistrate's Court at Nausori on a charge of fraudulent conversion committed by him on the 23<sup>rd</sup> of July 2004. He pleaded guilty and admitted eighty eight (88) previous convictions. He was sentenced to 2 years in prison concurrent to another sentence for a similar offence but consecutive to the sentence he was currently serving in prison.
- [2] The appellant then appealed to the High Court on the ground that his sentence was harsh and excessive. During the hearing of his appeal he abandoned his appeal on sentence on the ground that he was sure he would succeed in his appeal against conviction. The Learned Judge dismissed his appeal against conviction but, in the interest of fairness considered his appeal against the sentence. He rejected this appeal and confirmed the sentence of the Magistrate's Court. He now applies to this Court for leave to appeal against the judgment of the High Court which was delivered on the 31<sup>st</sup> of July 2009.
- [3] The Learned Judge stated that the maximum sentence for conversion, contrary to Section 279(1)© of the Penal Code Chapter 17 is seven (7) years imprisonment. The Tariff for offences under this Section was stated by Justice Shameem in *State v. Bole (2005) FJHC 470*, as a sentence of between 18 months and 3 ½ years imprisonment. The Learned Judge therefore considered that the sentence of 2 years imprisonment received by the appellant was well within the tariff and that the appellant was very fortunate that the Learned Magistrate did not make the sentence consecutive. I agree.
- [4] The appellant told me that he was aged 40 and had a wife and one child. He has been in prison since 2006. He is due for release in about October 2011.

- [5] The appellant has some education having been employed at one stage as a school teacher. Unfortunately, he thought he could earn more money than a school teacher by indulging in crimes most of which involve dishonesty.
- [6] The list of previous convictions shows that his offences are mainly of obtaining money by forgery, by false pretences and by impersonation. There are occasionally variations of this pattern with convictions of shop breaking, entering and larceny and one of house breaking, entering and larceny and another of larceny in a dwelling house.
- [7] For one so comparatively young, it is a sorry record because nearly all the offences involve a betrayal of trust and deceitfulness.
- [8] He told the Learned High Court Judge that the reason why he had pleaded guilty in the Magistrates Court was that the Resident Magistrate advised him that a plea bargain could be made with the prosecution. The Judge rejected this contention because the Court record made no mention of it but rather showed that the charge was read and explained to the appellant who stated that he understood it and therefore pleaded guilty. I informed the appellant that the Learned Judge had to rely on the Court record and so was in order in rejecting the appellant's submission.
- [9] I am satisfied that if I granted leave to appeal the appeal was foredoomed to failure. I informed the appellant that he ran the not-inconsiderable risk that the Full Court of this Court might increase the sentence based on the appellant's record.

[10] He stated that his wife has now begun a vegetable farm and on his release from prison he will work there with her. In his own interest and that of his wife and family he would be well advised to abandon dishonesty as a way of living and earn money by working in the development of the farm. Other persons have done this and if the appellant shows the necessary will, there is no reason why he cannot do likewise.

The application is refused.

Dated at Suva this 27<sup>th</sup> October, 2009.



A handwritten signature in cursive script, reading "John E. Byrne", is written over a horizontal dotted line.

**JOHN E. BYRNE**  
**JUDGE OF APPEAL**