

IN THE COURT OF APPEAL
[On Appeal From High Court]

CRIMINAL APPEAL NO: AAU0040 OF 2012
(High Court Case No: HAC 36 of 2010L)

BETWEEN : **THE STATE**

Appellant

AND : **ASHIL KUMAR**

Respondent

Coram : **Goundar JA**

Counsel : **Mr. M. Delaney for the Appellant**
Mr. J. Savou for the Respondent

Date of Hearing : **19 May 2014**

Date of Ruling : **2 June 2014**

RULING

[1] The State seeks leave to appeal against a 4-year term of non-parole imposed on the respondent after he was sentenced to life imprisonment for murder.

[2] The sole ground of appeal is as follows:

That the learned Sentencing Judge erred in principle in choosing to give primacy to rehabilitation and in, conversely, failing to adequately consider the need for deterrence, protection and denouncement in arriving at his ultimate decision to fix four (4) years as the period during which the Respondent would not be eligible for parole.


[3] Both counsel have filed detailed and helpful submissions. Mr. Delaney submits that the 4-year term is manifestly lenient having regard to the nature and circumstances of the offence. Mr. Delaney has also provided a tabulation of cases to show that in Fiji the non-parole period for murder is between 12 to 24 years.

- [4] Mr. Savou concedes that the 4-year term is 'relatively low' but argues that the State is barred from bringing this appeal because the 4-year term was recommended by the State counsel appearing in the High Court.
- [5] It is not in dispute that counsel for the State, Ms Puamau recommended the 4-year term in the sentencing hearing. Mr. Delaney submits that Ms Puamau's recommendation was made in an error and was not binding on the State.
- [6] It is clear that it was inappropriate for Ms Puamau to recommend a specific term of non-parole period. Sentencing is a matter for the courts and not for the prosecutors. The prosecutors' obligations are to assist the court by providing all the relevant information that has bearing on the sentence. It is not their function to recommend a specific punishment.
- [7] In the present case, it could be argued that the trial judge erred by imposing a term of non-parole period recommended by the State counsel in the sentencing hearing when that recommendation was made in an error.

Result

- [8] Leave is granted to appeal against sentence.




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Hon. Justice D. Goundar
JUSTICE OF APPEAL