

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

CRIMINAL APPEAL NO. AAU 103 OF 2015
(High Court Action No: HAC 59 of 2010)

BETWEEN : **JOSAIA KOROINAVOSA**
Appellant

AND : **THE STATE**
Respondent

Coram : **Chandra, RJA**

Counsel : **Mr R Vananalagi for the Appellant**
Ms S Tivao for the Respondent

Date of Hearing : **17 June, 2019**

Date of Ruling : **17 July, 2019**

RULING

- [1] The Appellant in the company of others was charged with 2 counts of aggravated robbery, one count of theft of motor vehicle and one count of unlawful confinement contrary to sections 311 (1)(a-b), 291(1) and 286 of the Crimes Act, 2009.

- [2] On 16th April 2013 the Appellant and entered a plea of guilty to all four counts in the information in the presence of his counsel.
- [3] On 30th April 2013 the Appellant had agreed to the summary of facts presented in court by the prosecution and was convicted of all four counts.
- [4] On 17th May 2013 the Appellant was sentenced to 7 years imprisonment for the 1st count, 2 years imprisonment for the 2nd count, 2 years imprisonment for the 3rd count and 12 years imprisonment for the 4th count, the sentences to run concurrently and also concurrent to the unrelated matter that he was serving.
- [5] The Appellant filed an application for enlargement of time to appeal against conviction on 8th July 2015 and through his Counsel an Amended Notice of Appeal against conviction on 18th March 2019.
- [6] The Appellant on his own filed a further amended notice of appeal on 12th February 2019 setting out the following grounds:
1. *That the Guilty plea entered was not voluntary made at the time I pleaded as I was subjected to such pressure from the court, Defence Counsel and other factors in that I did not genuinely have a free choice between "Guilty" and "Not Guilty" thus constituting the original proceedings a material.*
 2. *That the Guilty Plea entered was not voluntary made as Defence Counsel did not advise me on the strength of the evidence and advances of a Not Guilty plea as regards to a prospect of an acquittal.*
 3. *That the guilty plea entered was involuntary made, as the court and defence counsel failed to afford me a fair trial by not having Criminal Case No: HAC 059/2010 and Criminal Case No: HAC 077/2010, consolidated pursuant to section 59(1)(a)(b) of the Criminal Procedure Act as both matters were similar in nature and arose out one investigation whilst detained and arrested at Nabua Police station for both offences. Failure to do so prejudiced my right to a fair hearing.*
 4. *That the guilty plea entered was involuntary made my mind did not go with my plea, as I was a schizophrenia patient capable of drifting in and out of a delusional world making irrational decision. Thus constituting the original proceedings a mistrial.*

- [7] At the hearing the Appellant moved to disengage his Counsel which was allowed and he argued his own application.
- [8] He submitted a decision delivered by the Court of Appeal (Criminal Appeal No. AAU 44 of 2012) on 27th May 2016, where he had been acquitted. That being a matter where he and two others had been involved which was the High Court Case No.077/2010 which he referred to in his amended grounds of appeal.
- [9] High Court Case No.077/2010 and High Court Case No.059/2010 (the present case) are not inter related. The Appellant's position was that he was arrested and detained for both matters at the same time at Nabua Police Station.
- [10] The Application for enlargement of time had been filed by the Appellant on 8th July 2015 together with an affidavit explaining the delay in filing his appeal. He has stated in his affidavit that he had applied for bail pending trial before the High Court on several occasions which had been refused and that on one occasion when bail was refused, he had inflicted cuts with a razor blade on his neck which had resulted in him being ordered to be remanded at St. Giles Hospital pending mental examination. He had been remanded in custody at St. Giles Hospital for over a period of one year.
- [11] He stated further in his affidavit that he had been pressured by the learned trial Judge to plead guilty on the basis that he would be given a lengthy sentence if he was found guilty after trial.
- [12] He has stated regarding his delay in filing his appeal that after he was sentenced he had obtained the assistance of a serving prisoner to prepare his appeal and had given the same to a prison officer to be forwarded to the Court of Appeal Registry in June 2013. However, since he had not heard anything about his appeal, after a lapse of two years he had made the present application.

- [13] In his affidavit he admits the delay of two years, but states that he had appealed in time which had not been sent to the Registry of the Court of Appeal.
- [14] Although the explanation regarding the substantial delay is not satisfactory it remains to be seen whether there is any merit in his grounds of appeal.
- [15] His grounds of appeal centre on the fact that his guilty plea was not voluntary. He has submitted that although he had a Counsel appearing for him, he had not been properly advised. Further he says that he was in an unfit mindset when he pleaded guilty as he had been a patient at St. Giles Hospital.
- [16] The question for consideration therefore is whether the guilty plea was equivocal. In the sentencing judgment the learned trial Judge has stated that the Appellant's Counsel had indicated to Court that the Appellant was prepared to take a plea after receiving legal advice. That the information had been read and explained to him and the Appellant having stated that he understood same had pleaded guilty.
- [17] In Nalave v State, Criminal Appeal AAU0004 of 2006; AAU005 of 2006; 24 October 2008 [2008] FJCA 56 the Court of Appeal held:

"It has long been established that an appellate court will only consider an appeal against conviction following a plea of guilty if there is some evidence of equivocation on the record (Rex v Golathan (1915) 84 L.J.K.B. 758, R v Griffiths (1932) 23 Cr. App. R 153, R v Vent (1935) 25 Cr. App. R. 55). A guilty plea must be a genuine consciousness of guilt voluntarily made without any form of pressure to plead guilty (R v Murphy [1975] VR 187. A valid plea of guilty is one that is entered in the exercise of a free choice (Meissner v The Queen [1995] HCA 41; (1995) 184 CLR 132."

- [18] In the present instance apart from what the Appellant has stated in his affidavit which was about 2 years after he was convicted, and what the Appellant has submitted in his written submissions there is nothing to indicate that the plea of guilty was equivocal.

[19] In view of this position the application for extension of time to appeal against conviction fails.

Order of Court:

Application for extension of time to appeal against conviction is refused.



A handwritten signature in blue ink, appearing to read "Suresh Chandra", is written over the printed name.

Hon. Justice Suresh Chandra
RESIDENT JUSTICE OF APPEAL