IN THE COURT OF APPEAL, FIJI

ON APPEAL FROM THE HIGH COURT OF FIJI

CRIMINAL APPEAL NO. AAU 114 of 2018
(High Court Action No. HAC 88 of 2018)

BETWEEN   :   TOUVEA TAUNTEANG OTEN PARERE

Appellant

AND   :   THE STATE

Respondent

Coram   :   Chandra, RJA

Counsel   :   Ms S Nasedra for the Appellant

Ms S Kiran for the Respondent

Date of Hearing   :   5 November, 2019
Date of Ruling   :   8 November, 2019

1.

RULING

[1]   The Appellant was charged with another for the following offences:

1.   2 Counts of Aggravated Burglary contrary to Section 313(1) (a) of the Crimes Act, 2009.

2.   2 Counts of Theft contrary to section 29(1) of the Crimes act, 2009.

3.   1 Count of Burglary contrary to section 312(1)(a) and 1 Count of Theft contrary to Section 291(1) of the Crimes Act, 2009.

[2]   The Appellant pleaded guilty to all the charges on 18th October 2018 and he was convicted and sentenced on 23rd October 2018 to a term of 4 years with a non-parole period of 2 years.

[3]   He filed a timely appeal on 13th November 2018 setting out two grounds of appeal which were amended subsequently.

[4]   The amended grounds of appeal are:

1.   That the learned Sentencing Judge erred in law and in fact when he failed to give proper consideration to the Appellant's time spent in remand.

2.   That the sentencing Judge erred in law and in fact when he failed to give proper consideration to the Appellant's previous good character.

[5]   When considering an appeal against sentence, it is necessary that the Appellant must demonstrate that the Court fell into error in exercising its sentencing decision, as a result of acting upon a wrong principle, if extraneous or irrelevant matters have been taken into account, or if there is a mistake of facts, or if relevant considerations are not taken into account. **Kim Nam Bae v The State** (unreported Criminal Appeal AAU 15 of 1998; 26 February 1999).

[6]   The learned Sentencing Judge in his sentencing judgment mentioned about the time spent in remand and stated that he was taking that into consideration in selecting 8 years as the starting point of the aggregate sentence.

[7]   In **Sowane v State** CAV 0038 /2015 (21 April 2016) the Supreme Court considered the sentencing pattern adopted by the High Court in that case and considered it to be an appropriate process to deduct the time spent in remand after considering the ultimate sentence arrived at by giving effect to the aggravated and mitigating circumstances.

[7]   In the present case the period spent in remand has been considered in selecting the starting point of sentencing. In view of this position leave to appeal is granted.

[8]   The learned sentencing Judge failed to consider the Appellant's good character as a mitigating factor when sentencing the Appellant. In **Fifita v State** [201] FJCA 21; AAU0024.2009 (2 June 2010) it was held by the Court of Appeal that where there is evidence of good character, that may operate to reduce the sentence. This ground is arguable.

[9]   The State has conceded that this ground is arguable. At the same time, State has in their submissions considered the tariff that has been followed in the High Court regarding aggravated burglary in several cases.

[10]   The State has submitted that there is uncertainty as regards the tariff for aggravated burglary, that there is no consistency and suggests that it would be appropriate to have a guideline judgment.

Orders of Court:

Leave to appeal against sentence is granted.

Hon. Justice Suresh Chandra
RESIDENT JUSTICE OF APPEAL