

IN THE HIGH COURT OF FIJI
AT SUVA

APPELLATE JURISDICTION

CRIMINAL APPEAL CASE NO.: HAA 036 OF 2010

BETWEEN:

JOELI SOQALI

A N D:

THE STATE

Counsel: Applicant in Person
Mr. C. Ratakele for the State

Date of Hearing: 16th November 2010

Date of Ruling: 30th November 2010

JUDGMENT

1. The appellant above named was charged in the Magistrate's Court as follows:

"FIRST COUNT

Statement of Offence (a)

DAMAGING PROPERTY: Contrary to Section 324 of the Penal Code, Act 17.

Particulars of Offence (b)

JOELI SOQALI, on the 14th day of June, 2009, at Nasinu in the Central Division, willfully and unlawfully, damaged the Nakasi Police Station cell block window [toilet], mash, valued at \$50.00 the property of Fiji Police Force.

SECOND COUNT

Statement of Offence

ESCAPING FROM LAWFUL CUSTODY: Contrary to Section 138 of the Penal Code Act 17.

Particulars of Offence

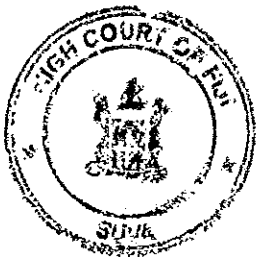
JOELI SOQALI, on the 14th day of June 2009, at Nasinu in the Central Division, being in the lawful custody of WSC 151 Nainasa Marama, escaped from such lawful custody”.

2. The appellant had pleaded guilty to the second count on 29.03.2010. Prosecution moved time to file facts of the case, when filed on the 12.04.2010 the appellant admitted the same and convicted and sentenced on the 16th May 2010. The appellant was sentenced for 12 months imprisonment.
3. The appellant being unsatisfied with the sentence, appealed against the sentence and submitted following grounds of appeal:
 - (i) That the Learned Trial Judge erred in law and in fact in not giving sufficient weight to the appellant’s early guilty plea.
 - (ii) That the Learned Trial Judge erred in law and in fact in sentencing the appellant to a 12 month consecutive sentence making the sentence manifestly harsh and excessive.
 - (iii) That the Learned Trial Judge erred in law and in fact in failing to mentioning in her judgment that the appellant damaged property of the Police Station as an aggravating factor when the Appellant did not in fact, plead guilty to the first charge.
 - (iv) That the Sentence of 12 months imprisonment is harsh and excessive bearing in mind all the circumstances of this case.
4. Now I consider the 1st ground of appeal, the appellant submits that the Learned Magistrate had not considered his early plea.
5. On perusing the case record I find that the Learned Magistrate has mentioned as follows:

“...you pleaded guilty at the first reasonable opportunity and saved the Court’s time”.

6. Since the Learned Magistrate had considered the early plea of the appellant as a mitigating factor therefore the first ground of appeal fails on its own merit.
7. The 2nd and 4th ground of appeal states as follows:
 - (ii) That the Learned Trial Judge erred in law and in fact in sentencing the appellant to a 12 month consecutive sentence making the sentence manifestly harsh and excessive.
 - (iv) That the Sentence of 12 months imprisonment is harsh and excessive bearing in mind all the circumstances of this case.
8. I will consider the period of imprisonment. The tariff for the offence is discussed in **Donu v State** [Crime. App. No. HAA.043 of 2001S where the learned Judge stated 'I do not think it any way of deterrence against this offence if this range is fixed between six to twelve months imprisonment'.
9. In **Tavuraniqiwa v The State** [2008] FJHC 15; HAA 008.2008 the Learned Judge stated that 'The State opposes the appeal; saying that the tariff for escaping is 6 to 12 months imprisonment and that such offences should always be served consecutively. I agree. If terms of imprisonment for escaping were to be made concurrent, there would be no deterrent value in them at all. As a matter of principle sentences for escaping from lawful custody should have the effect of lengthening the term of imprisonment served.'
10. Considering the tariff in above cases the Learned Magistrate had imposed a sentence within the tariff for the offence.
11. Now I consider the legality of ordering the sentence to be implemented consecutively. The present offence is completely different from the main case. In other words these two are two different offences in two different transactions. The offence of escaping from the Police custody does not stem from the transaction of the main offence; hence totality principle will not be applicable here.
12. The Totality Principle according to **Wong Kam Hong v State** [2003] FJSC 13; CAV0002.2003S is one of the two major limiting principles governing whether a sentence should be given consecutively. The other limiting principle is known as the 'one transaction rule.' Considering the circumstances of this case, the sentence does not offend the Totality Principle.
13. For the reasons stated above the 2nd and the 4th grounds of appeal cannot be sustained.
14. Now I consider the 3rd ground of appeal.

- (v) That the Learned Trial Judge erred in law and in fact in failing to mentioning in her judgment that the appellant damaged property of the Police Station as an aggravating factor when the Appellant did not in fact, plead guilty to the first charge.
15. The appellant had not pleaded guilty to the 1st count in the information. The Learned Magistrate had tried the case for trial against the appellant on the 1st count under the circumstances the Magistrate considering damaging the property of the Police Station as an aggravating factor is wrong.
16. The 3rd ground of appeal for reasons stated above succeeds on its merits.
17. Consider the nature of the offence the maximum punishment for misdemeanor is 2 years imprisonment. The sentence imposed by the Magistrate is well within the tariff for this offence.
18. The appellant had escaped from the custody of the police, it is observed, presently many suspects were escaping from the custody of the police, which cannot be condoned. Considering all circumstances I consider there is no serious injustice caused to the appellant therefore I see no reason to interfere with the sentence.
19. For the reasons stated above, I dismiss this appeal.
20. It is noted that the Learned Magistrate had imposed a sentence before trying the 1st count in the information. In my view it would have been prudent if the Magistrate had passed sentence after the conclusion of entire case.
21. Appeal dismissed.
22. 30 days to appeal.



S. Thurairaja
S Thurairaja
Judge

At Suva

Solicitors

Applicant in Person

Office of the Director of Public Prosecution for State