

IN THE HIGH COURT OF FIJI
AT SUVA
APPELLATE JURISDICTION

Criminal Appeal No. HAA 34 of 2014

BETWEEN : **JASHNEEL PRASAD**
Appellant

AND : **THE STATE**
Respondent

Counsel : Mr. K. Singh for the Appellant
Mr. T. Qalinauci for the State

Date of hearing : 15th December 2014

Date of Judgment : 17th December 2014

JUDGMENT

1. On the 7th November 2014 in the Magistrates Court at Suva the appellant entered pleas of guilty to the following 2 charges:

FIRST COUNT**Statement of Offence**

Using forged documents: contrary to section 157(1) (a) of the Crimes Decree No. 44 of 2009.

Particulars of Offence

Jashneel Prasad, between June 2014 to July 2014, at Suva in the Central Division, used false University of the South Pacific transcript of academic record for Bachelor of Commerce to induce Fiji National University to accept it as genuine.

SECOND COUNT**Statement of Offence**

Using forged documents: contrary to section 157(1) (a) of the Crimes Decree No. 44 of 2009.

Particulars of Offence

Jashneel Prasad, between June 2014 to July 2014, at Suva in the Central Division, used false University of the South Pacific transcript of academic record for Bachelor of Commerce to induce Fiji National University to accept it as genuine.

2. The facts were that the appellant had attended courses at University of the South Pacific (USP) in 2010 in commerce but he did not complete the course or pass any exams. The forged documents given to the Fiji National University (FNU) purported to show results from the USP which were not genuine in a attempt to gain entrance to that University. The falsity of the documents was discovered by the FNU before credit for the work purported to have been completed at USP was granted.
3. The appellant admitted the forgery and uttering for the purposes of applying for cross credit, to the Police when interviewed, and he entered his pleas of guilty at the earliest opportunity after obtaining legal advice.

4. The Magistrate sentenced the appellant (the accused below) to ten months on each count to be served concurrently with 5 months immediately to be served in prison and the remaining 5 months to be suspended for 36 months.
5. The appellant appeals that sentence on the grounds that the immediate term of imprisonment is harsh and excessive in the circumstances. In a very eloquent plea on behalf of his client, Mr. Singh reminds the Court of previous decisions where it has been stressed that every effort must be made to keep young first offenders away from the perhaps deleterious influences of prison life, and he renews the comprehensive mitigation offered to the Court below.

Counsel for the State submits that the sentence passed is "fair and reasonable".

6. The maximum penalty for this offence is ten years imprisonment. It is very rare for this offence to be charged alone; it is usually charged in conjunction with forgery and/or obtaining an advantage or property by deception.
7. It is remarkable in this case that the using of a false document did no harm to the institution (FNU) sought to be deceived nor did it deprive any other student of a rightful place at that University. The deception was detected timeously. The offence therefore cannot be said to be very serious and there was no gain to the accused.
8. He entered a plea at the earliest opportunity and has at all times appeared to be very remorseful. He is 24 years of age, single, and supporting aging parents. He has lost his employment in the Inland Revenue Service because of this conviction and he has therefore been punished financially. He is a committed Christian and has received religious counselling from a pastor at the Nausori Christian Fellowship. That pastor has seen fit to swear an

affidavit attesting to that counseling and to the appellant's faith in his religion. He has a clear record hitherto and has no matters pending in other Courts.

9. In the 1998 case of **Lausik Mukesh Chand** Pain J, in exercising the appellate jurisdiction of the High Court, reviewed the sentence passed by a Magistrate on the accused who had forged and uttered false academic qualification when applying for immigration and decided that for a young man there a suspended sentence would be justified.
10. In **Rajesh Kumar** HAC 005 of 2005, Gates J (as he then was) was passing sentence on a man who had entered pleas of guilty to 35 counts of forgery, uttering and obtaining money on forged documents. In that case Gates J said:

"I find the accused's remorse here to be genuine. He has made a serious mistake in his professional career which will continue to haunt him. He had pleaded guilty and repaid the money promptly"

He then passed a sentence of 2 years which he suspended.

11. In **Sanjay Shankar Sharma** HAC 003 of 2005, Shameem J sentenced an accused who had entered pleas of guilty to 12 counts of forgery, uttering and obtaining money on forged document to concurrent terms of two years' imprisonment suspended for two years.
12. In this present case the mitigating factors are very powerful. His total remorse and pleas of guilty at first opportunity coupled with no harm or loss to anybody means that this is a suitable case for a wholly suspended sentence.
13. The appellant has already spent 10 days in prison as of today and I am told he is completely devastated by that experience. I am sure that all who go to prison for the first time are equally devastated, but this short sharp shock

of having the prison gates clang shut on him will surely deter him from ever acting again in a similar way.

14. There is no purpose served in having him serve a short sentence of 5 months. He is remorseful, young and has co-operated fully with the authorities from the beginning.
15. I order that the sentence passed below be set aside and that he serve a sentence of 12 months imprisonment wholly suspended for 2 years. This sentence will run from the original date of sentence 4th December 2014.



At Suva

17 December 2014

A handwritten signature in black ink, appearing to read "P. Madigan", with a large, stylized initial "P" at the start.

P.K. Madigan
Judge