

IN THE HIGH COURT OF FIJI
AT LABASA
CRIMINAL JURISDICTION

Criminal Case No: HAM 50 & 51 of 2014

BETWEEN:

RAJNESH LAL

Appellant

AND:

THE STATE

Respondent

Counsel: Appellant in person
Mr. S. Vodokisolomone for Respondent

Date of Hearing: 30 December 2014

Date of Judgment: 2 January 2015

JUDGMENT

- [1] This is an application for an extension of time to appeal against sentence.
- [2] The appellant was sentenced for a number of offences by the Magistrates' Court after he pleaded guilty to the charges. The sentences are as follows:
- (i) Case No. CF 268/14
Common Assault - discharged without sentence
 - (ii) Case No. CF 269/14
Burglary - 8 months' imprisonment
Theft - 8 months' imprisonment
All terms made concurrent effective from 30 September 2014.
 - (iii) Case No. 426/14
Theft of poultry - 12 months' imprisonment
 - (iv) Case No. 423/14

Theft of ducks - 12 months' imprisonment

Both terms made concurrent effective from 3 November 2014, but consecutive with sentences imposed on 30 September 2014. In effect, the appellant's total sentence was 20 months' imprisonment.

- [3] The High Court Registry received the appellant's Notice of Appeal on 17 December 2014. The appeal is out of time by about two weeks. The reason for the delay is that the Department of Corrections took time in typing the appellant's Notice before forwarding it to the Registry. Since the length of the delay is short and the reason for it is understandable, I decided to hear the substantive appeal.
- [4] The grounds of appeal in summary are:
- (i) The sentence is excessive because the items stolen were not of high value.
 - (ii) The sentences should have been concurrent and not consecutive.
 - (iii) The sentence should have been suspended because the appellant was a first offender.
 - (iv) There were no aggravating factors.
 - (v) The appellant was a young offender and was the sole bread winner for his family.
- [5] In Case No. CF 269/14, the appellant broke into a dwelling house and stole property to a total value of \$830.00. All stolen items except the groceries were recovered. In Case No. CF 269/14, the appellant stole live poultry to a total value of \$200.00. In Case No. 423/14, the appellant stole two male ducks to a total value of \$80.00. The poultry and ducks were sold and the victims were not compensated.
- [6] The appellant was 22 years old when he committed these offences. He came from a broken home. He lived with his father and stepmother. He was unemployed. At the time of the sentencing, the appellant had a conviction for escaping from lawful custody.
- [7] The tariff for burglary ranges from 1 to 3 years' imprisonment (**Waqavanua v State** [2011] FJHC 247, HAA013.2011; 6 May 2011). The tariff for theft ranges from 2-9 months' imprisonment for a first offending, and a sentence in excess of 9 months' imprisonment for subsequent offending (**Mikaelie Ratusili v State** Criminal Appeal

No. HAA011 of 2012). In each case, the individual sentence is within the tariff for the offence. My only concern is that no reasons were given for the consecutive sentence.³

- [8] Before making the sentence consecutive the learned Magistrate was obliged to consider whether the total sentence reflected the criminality involved and was not excessive (**Bolawaqa v State** [1990] FJHC 58; Haa0086j.88s; 25 July 1990).
- [9] By not directing his mind to the totality principle, the learned Magistrate made an error of principle in his sentencing discretion. The total sentence of 20 months' imprisonment for a young offender with no previous conviction for theft in my judgment is excessive.
- [10] However, theft from a dwelling house and theft of livestock from farmers are serious offences that would attract immediate custodial sentence. Suspension is not appropriate given the nature of offending by the appellant. A just and fair punishment that reflects the total criminality involved can be achieved by making all the sentences concurrent.

Result

- [11] Extension of time to appeal is allowed. The consecutive order is quashed. In all three cases, the sentences are made concurrent effective from the date they were imposed. The total sentence now is 12 months' imprisonment. The appeal is allowed to this extent.



Daniel Goundar

JUDGE



At Labasa

2 January 2015

Solicitors:

Appellant in Person

Office of the Director of Public Prosecutions for Respondent