

IN THE HIGH COURT OF FIJI
AT LAUTOKA
APPELLATE JURISDICTION

Criminal Appeal No. HAA86 of 2018
(On appeal from Tavua CC 105/16)

JOSEFA TALIGA NADRIBALAVU

v

STATE

Appellant in person
Mr. S. Babitu for the State:

Date of Hearing: 12 December 2018
Date of Judgment: 14 December 2018.

JUDGMENT

- 1.] The appellant was convicted in the Magistrates Court at Tavua of one count of receiving stolen goods and was sentenced to a term of imprisonment of one year one month.
- 2.] He was ordered to serve 6 months immediate custodial sentence and the balance of 7 months was suspended for a period of three years.
- 3.] The appellants grounds of appeal are that
 - 1) the sentence is harsh and excessive, and

2) an allowance should have been made for the time he spent in custody awaiting trial in this matter.

The maximum sentence for receiving stolen property is ten years imprisonment.

- 4.] Recently in ***Rigamoto***, Hamza J. held the tariff to be a sentence of between 1 to 3 years.
- 5.] This Court adopts that tariff and notes that the learned Magistrate in the court below was aware of this sentencing band, arriving at his sentence of 13 months imprisonment.
- 6.] Being a sentence at the lower end of the tariff , the sentence cannot be said to be harsh and excessive and this ground of appeal fails.
- 7.] This appellant spent 32 months (!!) in custody awaiting trial in this matter.
- 8.] The sentencing Magistrate was aware of his and said the following as part of his sentence.

“24. There will be no further reduction of your sentence for the time you spent in remand. My predecessor was correct to remand you. Your previous history such as escaping from lawful custody together with the prosecution’s evidence against you in this case was compelling. You had to be remanded.”

- 9.] This Court would make the following comments with regard to that paragraph.

- (i) There was no evidence before the Magistrate that the appellant was serving a sentence for escape from lawful custody.
 - (ii) Just because his “predecessor” saw fit to keep him remanded in custody, did not make it justifiable.
 - (iii) The strength of the State’s case has nothing to do with time spent in remand. Any accused has the right to defend himself at trial even against a “compelling” State case.
- 10.] The Magistrate made reference to the history of the case when he said:
- “16. This case has been looming over you since 2016.*
- 17. The delay is largely attributable to my predecessor recusing himself as one of the prosecution witnesses was related to my predecessor”.*
- 11.] To be remanded for 32 months awaiting a straightforward Magistrates Court trial is not only unconscionable but in contravention of section 13(4) of the Bail Act 2002 which provides that a person in custody for more than 2 years for a matter that has not begun **must** be released on bail (my emphasis).
- 12.] Neither the “predecessor” nor the present incumbent honoured that mandatory provision.
- 13.] The Court below being aware of the length of time this Appellant was held in custody was judicially bound to give the accused credit for this time in all fairness, despite he being an escaper and despite the case against him being strong.
- 14.] This ground of appeal succeeds.

- 15.] The time spent in remand for this matter alone, exceeds the time that the Magistrate sentenced him for. .
- 16.] The Court would allow the appeal and sets aside the sentence passed below.
- 17.] The appellant is to be released from custody immediately and he will not have a suspended sentence of 7 months to serve.

18.] Orders:

1. The appeal is allowed.
2. The sentence passed below is set aside.
3. The appellant is to be released from custody unconditionally.



A handwritten signature in blue ink, appearing to read "P. Madigan", is written over a horizontal dotted line.

P.K. Madigan

Judge

High Court Lautoka