

IN THE HIGH COURT OF FIJI
AT LAUTOKA
APPELLATE JURISDICTION

Criminal Appeal No. HAA 78 of 2018

DESHWAR KISHORE DUTT

V

STATE

Ms J. Singh (L.A.C.) for the Appellant
Ms. R. Uce for the State

Date of Hearing : 19TH February 2019
Date of Judgment : 22ND February 2019

JUDGMENT

- 1.] On the 6th March 2018, in the Magistrates Court in Lautoka, the appellant entered a plea of guilty to a charge of going equipped for theft contrary to section 315 of the Crimes Act 2009.
- 2.] On the 17th day of September 2018 he was sentenced to an immediate term of imprisonment of 2 months to be served consecutively to any sentence he was serving.

3.] The appellant now appeals that conviction and sentence on the following grounds:

- That his plea of guilty was equivocal and the Magistrate fell into error by not allowing him to change it.
- That the learned Magistrate erred in making the sentence consecutive, rather than concurrent.

4.] Background

- i. The appellant had initially pleaded not guilty to the charge and was represented by counsel. Counsel subsequently withdrew and thereafter the appellant changed his plea to guilty while being unrepresented.
- ii. On the 30th April 2018 when the case was called for mitigation, the Appellant made an application to reverse his plea.
- iii. On the 16th August 2018, the learned Magistrate in a reasoned written ruling, decided that the plea was unequivocal. The appellant appealed this decision to the High Court, an appeal which was rejected, not because of lack of merit, but because the case below had not been determined.
- iv. The reasons for change given then and now are that at the time that he pleaded guilty, it was **“to get rid of the case. I was not in right mind. I was not in possession of the items”**.
- v. The Court then proceeded to sentence him and passed the consecutive sentence.

5.] Discussion.

- i. The learned Magistrate considered that the appellant had no difficulty in understanding the import of his plea and did not believe he was suffering from injuries he had sustained before he was called upon to make his plea.

- ii. However there are two factors that should be taken into consideration for this ground of appeal. First, that although the application for change of plea was made on the 30th April the Magistrate did not make his ruling until the 16th August nearly 4 months later. Secondly, this Court has seen evidence that the appellant had been seen by a medical practitioner on the 13th April, two weeks before he entered the guilty plea , and the medical advice was that he have open surgery to his fractured leg.
- iii. Given that much time had passed between the Magistrate had seen the Appellant and his ruling was written, and given that there is evidence he was suffering medically, this Court believes his plea might well have been equivocal.
- iv. This ground of appeal succeeds.
- v. The second ground is an appeal against the consecutive sentence. Section 22 of the Sentencing and Penalties Decree stipulates that a term of imprisonment must be served concurrently with any uncompleted sentence the convict is serving.
- vi. A court may direct otherwise but in the interests of transparent justice, a court must give reasons for departing from the “default” position provided by section 22. The court below has not done, so this Court would have varied the sentence to make it concurrent with whatever sentence the appellant is serving.
- vii. This is however a moot point given that the first ground of appeal succeeds.
- viii. The guilty plea is vacated and the sentence passed set aside.
- ix. It is now a matter for the D.P.P. to decide whether to pursue this matter in the court below or not.

6.] Orders:

1. The appeal succeeds.
2. The plea of guilty is vacated and a plea of not guilty entered.
3. The consecutive sentence of two months is set aside.
4. The discretion of the DPP whether to prosecute the appellant again is recognized.



A handwritten signature in black ink, appearing to read "Paul K. Madigan".

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Paul K. Madigan
Judge

22nd February 2019
At High Court Lautoka