

IN THE HIGH COURT OF FIJI
AT LAUTOKA
[CRIMINAL JURISDICTION]

HIGH COURT CRIMINAL APPEAL CASE NO.: HAA 08 OF 2019

BETWEEN : AIYAZ ALI DEAN

Appellant

AND : STATE

Respondent

Counsel : Appellant in person
Mr Niudamu For the State

Date of hearing : 26 April 2019

Date of Judgment : 03 June 2019

JUDGMENT

1. The Appellant filed this appeal against conviction and sentence on 24 February 2019. The Appellant has stated in his application that his plea was equivocal, his sentence was delivered in his absence when he was in Police custody, the

sentence is harsh and excessive and proper discount has not been given for mitigating factors and for the time spent in remand custody as his grounds of appeal.

2. The Respondent concedes that the Appellant has filed his appeal within time.
3. The parties filed written submissions and the appeal was heard on 26 April 2019. At the hearing the Appellant informed the Court that he does not wish to pursue his appeal against the conviction, but he only seeks the Court to consider the time that he has spent in remand.
4. The Appellant had been initially charged in the Nadi Magistrates Court for four counts of Uttering Counterfeit Notes, contrary to Section 166 (1) of the Crimes Act. He was sentenced on 24 February 2019. It appears that the Appellant had not been present on the day of the sentence. The Appellant's position is that he was in Police custody on 24 February 2019.
5. The Appellant has submitted a number of grounds of appeal. But first I will consider whether the time that the Appellant had been in remand is reflected in the sentence. Section 24 of the Sentencing and Penalties Act reads as follows:

"If an offender is sentenced to a term of imprisonment, any period of time during which the offender was held in custody prior to the trial of the matter or matters shall, unless a Court otherwise orders, be regarded by the Court as a period of imprisonment already served by the offender".

6. From the day that the Appellant was produced in Magistrates Court, he had been in remand until he was granted bail on 09 April 2015. Upon perusal of the copy record, it appears that the Appellant had been again in remand custody from 30 of March 2017 to 31 of July 2017.

7. It must be noted that the minutes made by different Magistrates since 2014 are very vague and it was extremely difficult to figure out the dates that the Appellant was in remand custody. Even the learned sentencing Magistrate has stated that he cannot ascertain the exact dates that the Appellant was in remand or on bench warrants. Having said that, the learned Sentencing Magistrate has taken two periods into consideration as the time that the Appellant was in remand custody. Accordingly, it is noted in the sentence that the Appellant was in remand custody from 12/12/2014 to 20/05/2014 and from 21/08/2017 to 25/08/2017.
8. The first time period considered by the learned Magistrate seems to be confusing as it is calculated backwards from December to May. Further it does not reflect the actual period that the Appellant was held in custody during 2014.
9. On the perusal of the Magistrates Court case record, it is very clear that the Appellant had been in remand custody from 06 February 2014 till 09 April 2015.
10. The second period considered by the Magistrate is from 21/08/2017 to 25/08/2017 which is 4 days, however, the case record of the Magistrates Court does not explain whether the Appellant was in remand custody for 4 days from 21 August 2017 till 25 August 2017. Instead the minutes of the Magistrate show that on 21 and 25 of August 2017, the Appellant had not been present in Court.
11. The learned Magistrate has not sufficiently given reasons as to why he did not consider the full period of time that the Appellant was in custody. The only reason that the learned Magistrate has given is the difficulty in ascertaining the period. It must be noted that it is not a reasonable explanation to deprive the Appellant from his entitlement for a discount pursuant to section 24 of the Sentencing and Penalties Act. Further it is clearly discernable that the learned

Magistrate has erred in calculating the time periods that the Appellant was in remand.

12. According to the minutes made by the learned Magistrate, the Appellant had been in remand custody from 07 February 2014 to 09 April 2015 and from 30 March 2017 till 31 July 2017. Therefore, the Appellant had been in remand custody for nearly 18 months in total.
13. The Appellant had not been present on the day that the sentence was handed down by the Nadi Magistrates Court. It is not clear when was the Appellant committed to Prison pursuant to the sentence. However, he has filed his appeal on 24 February 2019. Even if the time that he has served the sentence is calculated from the day that he filed his appeal, it appears that he has already served more than 3 months of his sentence.
14. The Appellant is initially sentenced for 17 months. The learned Magistrate has only deducted 6 months to reflect the time in custody. The State has conceded that the Appellant had been in remand custody for a period more than the term that he was sentenced.
15. In the circumstances, I am of the view that the Appellant must be given credit for the time that he was in remand custody as the learned sentencing Magistrate has erred in calculating the correct period. The Appellant has been in remand for a total period more than 18 months and he has already served 3 months in prison as a serving prisoner. Therefore, he has spent a total of 21 months in custody. I am satisfied that the Appellant has remained in custody for longer than his sentence.
16. In the circumstances I do not find any reason to consider the other appeal grounds.

17. The appeal is allowed. I order the Appellant to be released from Prison forthwith.



Rangajeeva Wimalasena
Actg. Judge

At Lautoka
03 June 2019

Solicitors: Appellant in Person
Office of the Director of Public Prosecution for the Respondent