

RAYMOND SIKELI SINGH and 3 Ors v STATE (AAU0008 of 2000S)

COURT OF APPEAL — CRIMINAL JURISDICTION

5 WARD P, SCOTT and FORD JJA

24 March 2006

10 **Criminal law — sentencing — robbery with violence and unlawful use of motor vehicle — first and second Appellants sentenced to 10 years' imprisonment while third and fourth Appellants sentenced to 8 years' imprisonment — incorrect figures in sentencing varied by Court of Appeal — whether variations correct.**

15 The Appellants were sentenced in the High Court on their own pleas of guilty to robbery with violence and unlawful use of a motor vehicle. The first and second Appellants (A1 and A2 respectively) were sentenced to 10 years' imprisonment while the third and fourth Appellants (A3 and A4 respectively) were sentenced to 8 years' imprisonment. They appealed against their sentences and the appeal was heard in this court. The differently constituted court at that time accepted that the Appellants had been in custody for some time before the sentence was passed and that the trial judge had failed to make any allowance. The court ordered that the sentence imposed in respect of each of the four Appellants was to be reduced by the period spent in custody on remand. The prosecution was requested to obtain and to provide such details to each of the Appellants and to the registrar. The final disposition of the appeal was adjourned to the July sittings of the court. The prosecution supplied figures at the next sitting of the court for the time each man had been held in remand. The court explained that the sentences would be varied. The Appellants disputed the figures which had been supplied to the court. The magistrate wrote to the officer-in-charge and was given figures that did not accord with those supplied to the court and so he wrote to the Director of Public Prosecutions (DPP) about it. The court's order varied the sentences as follows: (1) A1 and A2 — 9 years, 2 months, 3 weeks; (2) A3 — 7 years, 4 months; and (3) A4 — 7 years, 2 months, 3 weeks. The issue was whether the variations were correct.

25 **Held** — This case has revealed an extremely serious situation. Not only was the court given incorrect figures but, when the magistrate discovered the true position, the matter was allowed to languish with little apparent concern for the rights of the Appellants. The court ordered the DPP to file an affidavit explaining the position. It expects its orders to be implemented. That affidavit shall be filed with the court within 7 days and served on Mr Fa for A2 and on the remaining Appellants in person. Affidavits of service are to be filed with the court within 3 days of each such service.

30 Appeal allowed.

No cases referred to.

40 *T. Fa* for Nawiri

R. Gibson for the Respondent

45 [1] **Ward P, Scott and Ford JJA.** These Appellants were sentenced in the High Court on their own pleas of guilty to robbery with violence and unlawful use of a motor vehicle. The first and second Appellants were sentenced to 10 years' imprisonment and the third and fourth Appellants to 8 years. They appealed again their sentences and the appeal was heard in this court on 11 March 2004.

50 [2] The court, which was differently constituted at that time, accepted that the Appellants had been in custody for some time before the sentence was passed and that the trial judge had failed to make any allowance for that time.

On 19 March 2004, the court ordered that:

In respect of each of the four appellants the sentence imposed is to be reduced by the period spent in custody on remand. We request the prosecution service to obtain details in each case and to provide such details to each of the appellants and to the Registrar.

5 Final disposition of the appeal will therefore be adjourned to the July sittings of the Court.

[3] At the next sitting of the court, the prosecution supplied figures for the time each man had been held in remand and, in a brief correcting judgment on 16 July 2004 the court explained:

10 Counsel for the Prosecution Service has informed us of such periods as follows:

Singh 13 months 16 days

Nawiri 14 days

Bula 14 days

Seru 1 month 4 days

15 The sentences will therefore be varied as follows:

Singh varied to 8 years 10 months 2 weeks

Nawiri 9 years 50 weeks

Bula 7 years 50 weeks

Seru 7 years 10 months 3 weeks

20 In each case the sentence commences from 25 January 2000.

[4] It appears that when Resident Magistrate, V D Nadakitavuki went to Naboro prison as visiting justice, the Appellants disputed the figures which had been supplied to the court. The magistrate wrote to the officer in charge and was given figures that did not accord with those supplied to the court and so he wrote on, 19 April 2005, to the Director of Public Prosecutions (the DPP) about it.

25 These figures give the following periods in remand prior to sentence:

Singh 272 days.

Nawiri 274 days.

Bula 274 days.

30 Seru 265 days.

Today, Mr Gibson has confirmed that these figures are correct.

[5] We have tried to follow the same manner of calculating the sentences as the court used on 16 July 2005. We have therefore taken each month as 30 days and rounded up the remaining days to the nearest week in the Appellants' favour.

35 [6] Therefore, the sentences are varied in accordance with the courts order of 19 March 2005 and are as follows:

Singh 9 years 2 months 3 weeks.

Nawiri 9 years 2 months 3 weeks.

40 Bula 7 years 4 months.

Seru 7 years 2 months 3 weeks.

[7] Mr Gibson advises the court from the bar table that all the Appellants except Nawiri have been released and Nawiri is due for release tomorrow. It would appear therefore that Singh may have been released early. We consider it would be unconscionable to recall him at this stage and for the avoidance of any doubt, in his case we reduce the sentence from the above figure to the figure which would have resulted in this release on the date it occurred.

45 [8] This case has revealed an extremely serious situation. Not only was the court given incorrect figures but, when the magistrate discovered the true position, the matter was allowed to languish with little apparent concern for the rights of these men.

50

[9] The matter came to the attention of this court when a memorandum from the magistrate to the DPP seeking a reply to his earlier correspondence was copied, inter alia, to the President of the court of Appeal on 3 October 2005. The president wrote the same day asking the magistrate to arrange a meeting with an officer from the DPP and a senior prison official and copied that reply to the DPP and the officer in charge of Naboro Prison.

[10] Having heard no more, the court wrote directly to the DPP on 17 October 2005 asking that the matter be cleared up and pointing out that, if any correction was needed, it could be dealt with in the November sitting of the appeal court. There was no reply and no further information supplied to the court at or after the November sitting.

[11] It appears nothing further happened until the matter was again brought to the courts by an application on behalf of the second Appellant for habeas corpus. Mr Gibson appeared on 9 March 2006 and, on his undertaking to bring the matter to this court, Jitoko J adjourned the High Court action sine die.

[12] It was called in this session on 10 March 2006 and Mr Gibson for the State confirmed that the latest remand figures were correct. The court ordered the DPP to file, within 7 days, the correct figures for the remaining three Appellants and an explanation of how the wrong figures were previously supplied to the court. There was no response and so, on 20 March 2006, the registrar was asked to remind the DPP of the situation.

[13] The court has now received an affidavit, not from the DPP but from a litigation officer in his department. It appears the department cannot give any explanation for the supply of the incorrect figures. More importantly, there is no explanation for the delay and apparent lack of concern by the DPP's department in the months following the initial advice from the resident magistrate.

[14] On 10 March 2006, the court ordered the DPP to file an affidavit explaining the position. It expects its orders to be implemented. That affidavit shall be filed with the court within seven days and served on Mr Fa for Nawiri and on the remaining Appellants in person. Affidavits of service are to be filed with the court within three days of each such service.

[15] In order to have this matter resolved, Nawiri has had to bring it back to the court. Mr Fa has represented him and we consider it is appropriate to assign Mr Fa to him as counsel under s 30 and direct that Mr Fa's costs in this court are paid under s 32.

Appeal allowed.

40

45

50