

IN THE HIGH COURT OF FIJI
AT SUVA
APPELLATE JURISDICTION

CRIMINAL APPEAL CASE NO: HAA024 OF 2009

BETWEEN:

ELIKI TURAGANABORISI

Appellant

AND:

THE STATE

Respondent

Date of Hearing: 24th June 2009

Date of Judgment: 6th July 2009

Counsel: Appellant in person
Ms J. Cokanasiga for State

JUDGMENT

[1] On 5 March 2009, the appellant was convicted of larceny of roots, namely, yaqona plants, on his plea of guilty and sentenced to eighteen months imprisonment. A day before, he was sentenced to six months imprisonment for larceny. The sentences were ordered to be served consecutively, making a total overall sentence of two years imprisonment.

- [2] The appellant appeals against the severity of sentence. He repeats the matters advanced in mitigation at the trial.
- [3] In mitigation the appellant said he was twenty six years old, married and a farmer by profession. He said he had reconciled with the complainant and that the yaqona had been recovered.
- [4] In his sentencing remarks the learned Magistrate took into account that only part of the stolen yaqona was recovered and that he had not learnt his lessons from previous similar convictions.
- [5] The appellant had four previous convictions since 2005 for theft-related offences. On 27 February 2006 he was sentenced to eighteen months imprisonment for larceny in dwelling house.
- [6] The appellant committed the offence in the present case shortly after being released from prison. The learned Magistrate was therefore justified to take a serious view of the offence to deter the appellant from committing further offences.
- [7] However, the offence of larceny of roots is a misdemeanor and the maximum penalty prescribed for this offence is two years imprisonment. The sentence of eighteen months imprisonment is therefore on the higher side of the maximum sentence. In this regard the State concedes the appeal.

- [8] I accept the concession made by the counsel for the State. In his sentencing remarks the learned Magistrate made no reference to the fact that the appellant had entered an early guilty plea and that he had sought forgiveness from the complainant. Some concession should have been made for the early guilty plea and the remorse expressed by the appellant in seeking forgiveness from the complainant. A further reduction of six months would have properly reflected these factors. Of course, he was not entitled to any credit that is generally afforded to a person of previous good character.
- [9] For these reasons the sentence of eighteen months imprisonment is substituted with a sentence of twelve months imprisonment, to be served consecutively with any pre-existing prison sentence.
- [10] The appeal is allowed.

Daniel Goundar
JUDGE

At Suva
6th July 2009

Solicitors:

Appellant in person
Office of the Director of Public Prosecutions for State