

IN THE COURT OF APPEAL, FIJI ISLANDS
AT SUVA

CRIMINAL APPEAL NO. AAU0040 OF 2008 *Appellate Jurisdiction*

BETWEEN : JAMES WILLIAM *Appellant*
AND : THE STATE *Respondent*

Before the Honourable Judge of Appeal Mr Justice John E Byrne

Counsel : Appellant – In Person
A. G. Elliot for the Respondent

Date of Hearing & Ruling : 10th June 2008

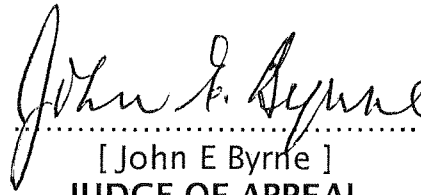
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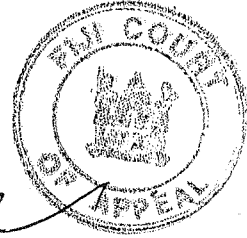
- [1] The Appellant seeks Leave to Appeal from a Judgment of Shameem J. in the High Court given on the 26th of October 2007. The Judge was sitting in her Appellate capacity as a Judge of the High Court from a Judgment of the Suva Magistrates' Court on the 31st of March 2006 in which the Court convicted the Appellant and three others on a charge of ***Robbery With Violence*** on the 21st of April 2005. The Magistrate sentenced the Appellant to 7 years imprisonment. The facts were that on the 21st of April 2005 the Appellant and his companions robbed one Hans Juergen Schilling, a 44-years old German national married to a Fijian citizen of \$10,000.00 Euros which is equivalent to \$20,530.00FD whilst they were on holiday in Fiji.

- [2] The Appellant has 9 previous convictions, 4 for ***Larceny from the Person*** and 1 for ***Robbery***. Three convictions were for being ***Drunk and Disorderly*** and the last for ***Activation of a Suspended Sentence***.
- [3] The learned Magistrate said of the Appellant and one of his co-Accused that "these two Accuseds have the same sort of interests that is ***"Robbery With Violence"*** or ***"Larceny" from Persons***. *They earn their living by stealing. For them, this sort of lifestyle gives them pleasure*".
- [4] I fully endorse those comments.
- [5] The learned Magistrate sentenced the Appellant to 6 years imprisonment on the charge of ***Robbery with Violence*** and re-activated one of the 2 years imprisonment suspended for 3 years.
- [6] The Appellant then appealed to the High Court and was partly successful in that the learned Judge reduced the term of 6 years to five years so that instead of serving 7 years he was ordered to serve a total of 6 years imprisonment.
- [7] The learned Judge said, quite correctly in my view, that because he committed the same offence within the operational period, he could have faced the activation of the full two year term.

- [8] Shameem J. said, that, serious as was the Appellant's offence, it did not include the infliction of injuries nor was a weapon used. She therefore thought it appropriate to reduce the sentence of the Magistrates' Court by one year.
- [9] With great respect to this very experienced Judge, I consider that she was if anything very generous to the Appellant. I say that because the facts were that while crossing the road with his wife Mr Schilling was suddenly surrounded by four people one of whom was the Appellant. One lifted his arm and took his wallet, leaving him struggling. I am satisfied that the sentence imposed by the Magistrates' Court was well within the tariff for ***Robbery With Violence***. They committed the offence on tourists whose value to this country is undoubted and the amount of money stolen was high. This country needs tourists who bring in overseas currency which is converted to Fijian dollars and spent here. I have little doubt that this couple will not wish to return to Fiji either at all or if so not for some appreciable time because of the actions of the Appellant and his colleagues. There can be no doubt that the four Accused recognised the victim as a tourist and decided he was vulnerable and likely to have money on him. In my judgment it was a cowardly act and one which deserves a heavy sentence.
- [9] When I asked the Appellant why he committed the offence, he said simply because of "*peer pressure*". Courts often hear this excuse which to my mind is not an excuse at all but at best a rather weak explanation for criminal behavior.

[10] There is no merit in this application which is hereby dismissed.


[John E Byrne]
JUDGE OF APPEAL



At Suva

10th June 2008