

IN THE HIGH COURT OF FIJI
AT LABASA
[APPELLATE JURISDICTION]

CRIMINAL APPEAL CASE NO. HAA20 OF 2017

(Magistrates' Court Case No. 200 of 2017)

BETWEEN: ASHWIN CHAND

APPELLANT

AND: THE STATE

RESPONDENT

Counsel: Appellant in Person
 Ms A Vavadakua for the Respondent

Date of Hearing: 8 January 2018

Date of Judgment: 19 January 2018

JUDGMENT

- [1] This is a timely appeal against sentence only.
- [2] On 1 May 2017, the appellant was charged with one count of obtaining a financial advantage by deception. He was produced before the Magistrates' Court on the same day and further remanded in custody. His subsequent applications for bail were refused. Following a trial, the appellant was convicted and sentenced to 16 months' imprisonment – 10 months to serve and 6 months suspended for 2 years.
- [3] The appellant's main complaint is that the learned magistrate failed to give any discount for the time spent in custody while on remand. It is not in dispute that the

appellant remained in custody on remand until he was sentenced on 3 October 2017. The total remand period is 5 months 3 days.

- [4] Section 24 of the Sentencing and Penalties Act 2009 creates an obligation on the courts to consider any time spent in custody when exercising the sentencing discretion. When discounting for the remand period, there is no requirement to follow a precise formula (*Vasuca v State* [2015] FJCA 65; AAU011.2011 (28 May 2015)). The principle is that allowance should be made for any significant period in custody while on remand (*Sowane v State* unreported Cr App No CAV0038/2015; 21 April 2016).
- [5] Counsel for the State concedes that the appellant's remand period was not discounted for in the sentence, but submits that there has been no substantial miscarriage of justice by the failure to discount for the remand period in the sentence.
- [6] The appellant deceptively obtained \$2500.00 cash from the complainant on the pretext of selling him a motor vehicle and convincing him that he was a military officer. The appellant is not a military officer. He did not own a vehicle. He is a recidivist with more than 50 previous convictions. He committed this offence while on bail in an unrelated case in Lautoka.
- [7] The maximum penalty prescribed for obtaining property by deception is 10 years' imprisonment. The tariff for this offence is 2 to 5 years' imprisonment (*State v Sharma* [2010] FJHC 623; HAC122.2010L (7 October 2010)). The appellant's sentence is not only below the tariff but lenient. The partial suspension of the sentence was inappropriate.
- [8] I would have enhanced the sentence but for the significant remand period that was not discounted for in the sentence. I am satisfied that the failure to discount for the remand period in the sentence has not caused a substantial miscarriage of justice pursuant to section 256 (2) (f) of the Criminal Procedure Act 2009.

Order of the Court:

[9] Appeal dismissed.



A handwritten signature in blue ink, appearing to read "Daniel Goundar", is written above a dotted line.

Hon. Mr Justice Daniel Goundar

Solicitors:

Appellant in Person

Office of the Director of Public Prosecutions for the Respondent