

R v Fonokalafi

Supreme Court, Nuku'alofa

Lewis J

10 Cr 328/96

7 April, 1997

*Criminal law - sentence - forgery - falsification of accounts - delay
Sentencing - forgery - delay - guilty pleas in trial*

The accused pleaded guilty to 18 charges of falsification of accounts and knowingly dealing with forged documents. He pleaded guilty part way through his trial.

20 Held:

1. The accused had committed the offences in 1990-91 and they involved \$1902.70 of which \$1500.00 had been repaid.
2. Cooperation with authorities from an early time will produce a sentencing discount of sometimes up to one third of the head sentence.
3. The accused had no prior convictions; no explanation was forthcoming from the prosecution for the delay in investigation.
4. Long delay in awaiting trial is a factor effecting the structure of a sentence. Here it caused the sentences (of 2 years imprisonment, concurrent) to be suspended.

30 Counsel for prosecution : Ms Simiki

Counsel for prisoner : Mr Niu

Judgment

40 Latu Fonokalafi you have pleaded to 18 counts of breaches of the Criminal Offences Act. The two classes of offending are falsification of accounts and knowingly dealing with forged documents. Two counts were withdrawn by the Crown Prosecutor on technical grounds associated with the number of charges which may be included in one indictment. There will as I understand the position be no further action in respect of those matters.

50 In the beginning you pleaded Not Guilty. You were given advice by your counsel and if I may say so, sensibly elected to plead Guilty to each count on the 4th day of trial. The evidence called by the prosecution is overwhelmingly strong. Indeed you I am told implicated yourself in an unchallenged series of admissions to Police. Not only did you confess but you made restitution of the greater part of the sums which came into your hands. The outcome of your trial was inevitably that you would have been found guilty, from what I am now told.

The Crown case is that you were a civil servant employed in the salaries division of the Ministry of Finance - the Treasury. Your duties required you to check documents known as salary and overtime vouchers. There are some 10 such vouchers involved in this Indictment. Your job required you to check the accuracy of the identity of the employee the appropriate salary and overtime rates for the employee against a record known as the salaries book.

You created fictitious employees, entered them into the system, certified the accuracy of the fictitious employee's identity and drew the money yourself. By this method in the years 1990 and 1991 you obtained by false entries and forgery for yourself (for present purposes,) 10 vouchers approved which netted you \$1902.70.

You have repaid approximately \$1500.00. What you have however caused is the expense inconvenience and difficulty experienced by the witnesses, indeed by all of us who have had to sit through this matter for the four days it has occupied.

I should make it clear that co-operation with the authorities from an early time by those charged will produce a sentencing discount of sometimes up to one third of the head sentence.

In sentencing you I take into account that you have no prior record of offending and that you are genuinely sorry for what you have done. No explanation is forthcoming from the prosecuting authorities as to why it is you were not interviewed by Police and why this prosecution was not got on with since the offending was nearly seven years ago and the investigation was not seriously undertaken until 1993.

I do not suggest that the delay was caused by the Counsel in charge of the prosecution Ms. Simiki. The lower court documents were not delivered into this court until April 1996. Wherever the responsibility for the delay rests, people should know that long delay in awaiting trial is a factor effecting the structure of sentence. Here an immediate effect is to cause the sentences to be suspended. It would be wrong in my opinion to cause the sentences to be carried into effect knowing that you have now made restitution, your personal circumstances have changed and you have pleaded guilty some nearly seven years since the offences.

This has been a most serious breach of the trust imposed upon you in your work Fonokalafi. You have certainly had plenty of time to await this moment of sentence. I doubt that you will reoffend. I take into account your age your background and the submissions of your counsel when fixing the head sentences.

In respect of each of counts 1 - 10, 12, and 14 to 20 you are sentenced to imprisonment for a period of two years concurrently on each count. The operation of the sentences of imprisonment is suspended for a period of two years on condition that you do not re-offend in that period. If you are convicted of any criminal in the next two years from this date you will be brought here charged with breach of your undertaking and you will serve the two year sentences I have imposed.