

IN THE COURT OF APPEAL OF TONGA  
CRIMINAL JURISDICTION  
NUKU'ALOFA REGISTRY

AC 8 of 2010



20/01/11.

BETWEEN : PITA LATU - Appellant

AND : REX - Respondent

BEFORE THE HON. CHIEF JUSTICE

DECISION

[1] This is an application for leave to appeal out of time against a sentence of 16 years imprisonment passed on the applicant on 7 November, 2008.

[2] As appears from the supporting affidavit, the applicant was convicted and sentenced in respect of offences of conspiracy to commit armed robbery, abetment of armed robbery and housebreaking. The total of 16 years was reached by imposing a sentence of 15 years for the armed robbery counts, two years for the housebreaking, concurrent, one year in addition for breach of a suspended sentence of 12 months imprisonment for possession of dangerous drugs.

[3] It appears from an amended record of previous convictions prepared on 15 October, 2008 that the applicant had eleven previous convictions including housebreaking and theft, arson, assault, assault occasioning grievous bodily harm, receiving and escape from lawful custody.

[4] According to the supporting affidavit the applicant did not instruct his counsel, Mr. Pouono to appeal the sentence until "about February/March 2010".

[5] Section 20 (1) of the Court of Appeal Act (cap 9) provides that an application for leave to appeal must be lodged within 42 days of the date upon which the sentence was imposed.

[6] By February, 2010 already well over 12 months had passed since the sentence was imposed. At the present date, over two years have elapsed. For an application for leave to appeal out of time to be successful some

acceptable, explanation for not appealing sooner must be offered; is not sufficient merely to postpone a decision to appeal until a date long after the appeal period has expired. As explained in *Rigby* (17 Cr. App. R 11): "it must be understood that an extension of time will not be granted as a matter of course; the court will require substantial reasons to be advanced before they will grant such an extension" (and see also *Lesser* (27 Cr. App. R 69) and *R v Hawkins* [1997] 1 Cr. App. R 234, 239 C-D)

[7] The application is refused.

**DATED: 18 January, 2011**



  
**M D Scott  
(President)**