

IN THE COURT OF APPEAL, FIJI AT SUVA

CRIMINAL APPEAL NO. AAU0037/2000

(High Court Criminal Appeal Nos. 127 of 1999 and 128 of 1999)

BETWEEN: MARIKA BANUVE Appellant/Applicant

AND: THE STATE Respondent

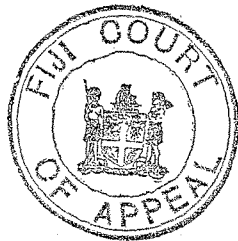
APPLICATION FOR LEAVE TO APPEAL

1. In the Magistrates' Court, on two charges of robbery with violence the appellant was sentenced to 18 months imprisonment in each case, the sentences to be cumulative. In turn the total of 3 years was made consecutive to the term of imprisonment he was already serving, namely 3 years 6 months. Thus the total of the sentences he was then serving or to serve was 6 years 6 months.
2. On appeal to the High Court, the two new sentences were made concurrent, with the result that the total sentence was reduced to an effective 5 years.
3. The appellant has filed a document which he has described as a "late sentence appeal". I treat it as an application to extend the time within which notice of appeal may be given.
4. An appeal in respect of a sentence imposed by the High Court in its appellate jurisdiction lies only where the sentence is an unlawful one or passed in consequence of an error of law, or where the High Court imposed an immediate custodial sentence in substitution for a non custodial one - s.22(1A) of the Court of Appeal Act as amended.
5. The appellant's initial points relate to an allegation that he was not given the opportunity to have outstanding charges taken into consideration. This

however is a misconception. The question of taking outstanding charges into consideration did not arise at the time of sentencing on the charges to which the present application relates. If that issue arose at all, it could only have been at the earlier sentencing, when the charges the subject of the present application were still outstanding. It is not a matter that can arise in the present application.

6. The remaining matters raised by the applicant, in relation to the sentence itself, as distinct from incidental matters such as his wish to be present at the hearing of the appeal, are all complaints about the severity of the sentence. They do not fall within the ambit of s.22(1A).
7. As no tenable grounds of appeal have been shown, I dismiss the application.

Dated at Suva this 7th October 2001.



Thomas Eichelbaum
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Thomas Eichelbaum
Justice of Appeal