

IN THE COURT OF APPEAL, FIJI ISLANDS
AT SUVA

CRIMINAL APPEAL NO. AAU0020'A' OF 2003S
(High Court Criminal Action No. HAA014 of 2003S)

BETWEEN:

ILAISA SOUSAU

Appellant

AND:

THE STATE

Respondent

APPEAL AGAINST SENTENCE

In the Magistrates Court the applicant pleaded guilty to charges of escaping from lawful custody, and unlawful use of a motor vehicle. He was sentenced to four months imprisonment on the first, and a concurrent term of three months on the second. His appeal to the High Court having been dismissed, he has now filed an appeal to this Court.

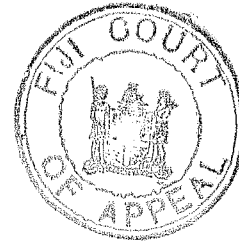
Under s22 of the Court of Appeal Act, a second appeal relating to a prosecution originating in the Magistrates Court can only be on a question of law. Mostly, the grounds advanced by the appellant relate to questions of fact. Only one could be described as raising any issue of law, namely that the Judge failed to take into account that the appellant had already been punished for the same offence. In this the appellant is referring to internal prison disciplinary proceedings against him.

Contrary to the appellant's assertion, the High Court Judge gave consideration to the issue raised. Following well established principles she held that the fact an offender has been subjected to an internal inquiry did not exclude the jurisdiction of the criminal court, but that court must take into account any punishment already imposed. The Judge concluded

that the sentencing Magistrate did not make any error of principle, and that the sentence imposed was within the available range.

In these circumstances the further appeal does not raise any question of law. Even if one could be discerned, the appeal must be regarded as frivolous. Acting under s35(2) of the Court of Appeal Act, I dismiss the appeal.

Dated at Suva 25 August 2003.



~~Thomas Eichelbaum~~

Thomas Eichelbaum
Justice of Appeal