

IN THE COURT OF APPEAL, FIJI ISLANDS
ON APPEAL FROM THE HIGH COURT OF FIJI

CRIMINAL APPEAL NO.AAU0020 OF 2002

BETWEEN:

MANASA WAQA 20/02
 APPELLANT

AND:

THE STATE
 RESPONDENT

Coram: Hon. G. Ward, President
 Hon. Eichelbaum, JA
 Hon. Sheppard, JA

Hearing: Wednesday, 7th and Monday 12th July 2004, Suva

Counsel: In Person for the Appellant
 Mr. D. Goundar for the Respondent

Date of Judgment: Friday, 16th July 2004, Suva

JUDGMENT OF THE COURT

The appellant pleaded guilty in the Magistrates' Court on 25 April 2001 to one offence of Housebreaking and Larceny. The offence had been committed during the time he had escaped from a prison sentence he was then serving. The magistrate sentenced him to two years imprisonment and ordered it to be consecutive to the sentences he was then serving. Those totalled seven years and were for two offences of robbery with violence and five less serious offences, one of which was escape. He applied to the High Court for leave to appeal against sentence out of time. It was heard by Shameem J on 21 June 2002 and was refused. He now appeals to this Court from that refusal.

The case was first heard by Reddy P as a single Judge and the matter originally came before us in the form of a request under section 35(3) of the Court of Appeal Act to have the appeal dealt with by a bench of three. However, although Reddy P issued a written decision, counsel for the State accepts that it did not dispose of the appeal and so the request for a full bench was no longer relevant. We therefore proceeded to deal with the appeal.

The appellant told the court that he had completed a Petition of Appeal within time and handed it to an officer at the prison. He has sworn an affidavit to that effect and the reception officer at the prison at the time has deposed that he did not receive any such document. However, these events date back to April 2001 and, in view of the possibility that the appellant did hand in a Petition which may have been mislaid before it could have been transmitted to the reception officer, we proceeded on the assumption that there was a reasonable explanation for the delay and granted leave to appeal out of time.

The appellant however still had to overcome the hurdle that on the merits there was no prospect of the appeal succeeding.

The record shows that the Magistrate took a starting point of three years, and gave a discount of one year for the prompt plea of guilty. Ordinarily, there could be no quarrel with that sentence or with the decision to make the sentence consecutive. The offence was separate from the serious offences committed previously and took place when he had escaped from prison. No charge of escape was preferred and if the sentence for this offence had been made concurrent with the sentences he was serving, the appellant would have escaped punishment.

The only ground raised, which is worthy of consideration, is whether the sentence made appropriate allowance for application of the totality principle. The proper approach would be to consider the term which would have been appropriate had the appellant come before the Court for sentence for all the offences on a single appearance. On that basis, nine years was within the available range and the sentence cannot be challenged on this ground.

Accordingly we conclude, as did the Judge, that there are no reasonably arguable grounds for any appeal against sentence. Accordingly the appellant cannot make out his case for an extension of time and his appeal is dismissed.

Order.

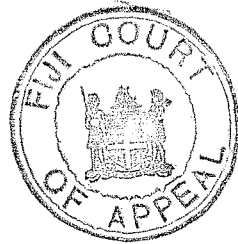
Leave to appeal out of time granted. Appeal dismissed.

Gordon Ward

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Gordon Ward, President

Thomas Eichelbaum

.....
Eichelbaum, JA



J. F. Sheppard

.....
Sheppard, JA

Solicitors:

In Person for the Appellant

Office of the Director of Public Prosecutions, Suva for the Respondent