

IN THE COURT OF APPEAL, FIJI ISLANDS

CRIMINAL APPEAL NO. AAU 0024 OF 2004S

Between:

JOSAIA TAKA

Appellant

and

THE STATE

Respondent

Appellant in person  
Ms. A. Prasad for the Respondent

DECISION

During the period June to August 2000 the Appellant was an escaped prisoner on the run. On two separate occasions in June 2000 he committed two offences namely larceny and larceny from the person. In August 2000 he committed a further offence of house breaking entry and larceny.

In August 2000 he was sentenced to 6 months imprisonment in respect of each offence by the Lautoka Magistrates' Court. The Court ordered that the three sentences be served consecutively to each other and that they also be served consecutively to the sentence of imprisonment from which he had escaped.

In March 2004 having been given leave to appeal out of time the High Court at Lautoka heard the Appellant's appeal against the sentence imposed in the Magistrates' Court. The Judgment of the High Court was rather brief:

"In my view the accused is lucky. There is no merit in this appeal (which) is dismissed."

By virtue of Section 22 (1A) of the Court of Appeal Act (Cap 12) as amended:

"No appeal under subsection (1) lies in respect of a sentence imposed by the High Court in its appellate jurisdiction unless the appeal is on the ground –

- (a) that the sentence was an unlawful one or was passed in consequence of an error of law; or
- (b) (not applicable).

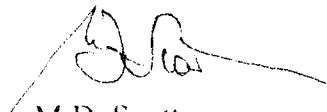
I take the words "a sentence imposed by the High Court" to include a sentence of the Magistrates' Court confirmed on appeal by the High Court.

The Appellant explained that his main complaint was that the sentences imposed on him by the Magistrates' Court were not ordered to run concurrently with each other and concurrently with the lengthy term of imprisonment which he was already serving. He told me that one of his fellow inmates had also escaped and had also committed further offences but had received a sentence to run concurrently with that he was already serving.

In reply Ms. Prasad submitted that no error of law had been disclosed that would bring the Appellant's case within Section 22 (1A) of the Act. The question of concurrence or consecutiveness was, she suggested, purely discretionary. The offences had been committed on different occasions and in different places. The maximum available sentences of imprisonment ranged between 5 and 14 years. The sentences of 6 months imprisonment were clearly not unlawful.

While perceived disparities in sentencing are a familiar ground for grievance the mere fact that another escaped prisoner received a concurrent sentence for subsequent offending in another case is not in my opinion sufficient to support the submission that an error of law has occurred in this case. There is no mention of this complaint in the petition of appeal. Given the relatively short sentences imposed in the Magistrates' Court I do not think that it is maintainable that no credit was given to the Appellant for his guilty pleas or that the totality principle was ignored as the Appellant alleged.

I am satisfied that the sentence confirmed by the High Court was lawful and was not passed in consequence of any error of law. In these circumstances the appeal must be dismissed.

  
M.D. Scott  
Justice of Appeal

4 June 2004