

IN THE COURT OF APPEAL, FIJI ISLANDS

CRIMINAL APPEAL NO. AAU 13 OF 2004S

Between:

JOSAIA TAKA

Appellant

and

THE STATE

Respondent

DECISION

On 1 May 2000 the Applicant was convicted on his own plea and sentenced to three years and three months imprisonment for offences of unlawful use of a motor vehicle and shop breaking, entry and larceny. At the time of his conviction he was already serving a three year sentence of imprisonment, apparently for a series of offences of robbery with violence. The Magistrates' Court ordered that the sentence imposed be served consecutively to that which the Applicant was already serving.

On 22 November 2002, after being given leave to appeal out of time, the Applicant appealed to the High Court against sentence. His grounds of appeal were that the sentence was disproportionately severe, that his guilty plea was disregarded and that the sentence should have been made concurrent to that which he was already serving.

The High Court dismissed the appeal. The Judgment was rather brief. It reads:

"This appeal has no merit. No error of law or fact is disclosed or apparent. Appeal dismissed."

On 18 March 2004 the Applicant presented a petition of appeal to this Court appealing against his sentence.

Under Section 26 (1) of the Court of Appeal Act (Cap 12) the Applicant had 30 days following the dismissal of his appeal by the High Court in which to lodge a further petition to this Court. The Applicant is a long way out of time. No application for leave to appeal out of time has been filed.

Under the provisions of Section 22 (1) (A) (b) no appeal lies against a sentence confirmed by the High Court unless the sentence was "unlawful" or was "passed in consequence of an error of law."

In my view, the proposition that three years and three months imprisonment is excessive for the offences committed by the Applicant is unarguable as is the suggestion that the Magistrate erred in law in providing that the sentence should be served consecutively. I am satisfied that sentence confirmed by the High Court was lawful and proper and was not passed in consequence of any error of law.

As already noted the Applicant is well out of time. In my opinion this appeal is devoid of merit and is bound to fail. Under the provisions of Section 35 (2) of the Court of Appeal Act the appeal is dismissed.



M.D. Scott
Justice of Appeal

21 June 2004