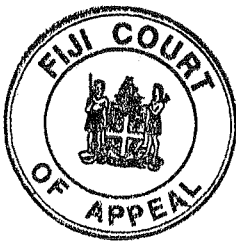




- [4] The applicant's grounds of appeal refer to the absence of a minimum term and are, otherwise, a repetition of his mitigation.
- [5] By section 21 (1) (c) of the Court of Appeal Act, a person convicted by the High Court may appeal against sentence with the leave of the Court unless the sentence is one fixed by law.
- [6] The mandatory sentence for murder is life imprisonment under section 200 of the Penal Code. Section 33 of the Penal Code before it was amended in 2003 gave the sentencing court an additional power to recommend the minimum term the court considered the convicted person should serve. However, this was altered by the Penal Code (Penalties) (Amendment) Act 2003 which gave the sentencing court a discretion to "*fix* the minimum term which the court considers the convicted person *must* serve" [my emphasis]. I do not consider it is any longer a sentence fixed by law and so it may be appealed with leave.
- [7] The applicant's reference in his grounds of appeal to the failure of the judge to fix a minimum term suggest that he believes that, by the absence of such an order, he will serve a longer time in prison.
- [8] That is not the case. The time when a person sentenced to life imprisonment is due for release is determined by the executive authority. That decision will set the earliest date any such person can be released. If a period has been set by the court which would result in a release date before the date recommended by the authority, it would be subject to the authority's decision and so would be ineffective until the date set by the authority.
- [9] The court will fix a minimum term if it considers the offence was of such seriousness that a longer period should be served before the authority should consider a date of release. In those circumstances, whenever imposed, such a term will be likely to extend the effective term.

[10] This appeal on that ground cannot improve the sentence this man has been ordered to serve. The further grounds based on mitigating circumstances cannot alter the basic mandatory sentence of life imprisonment. In those circumstances, I refuse leave to appeal against sentence.

[11] I would add that this applicant speaks only Mandarin. In prison he has little or no opportunity to communicate with other people which must add substantially to the punitive effect of his sentence. More significantly, he is unlikely to be able to ensure his case is placed before the appropriate authority as soon as possible or otherwise to ensure his earliest release is properly advocated. I ask that a copy of his ruling be sent to the appropriate consular officer in the Embassy of the People's Republic of China so they can take whatever steps are appropriate to protect his interests.



A handwritten signature in cursive script, appearing to read "Gordon Ward".

**Gordon Ward**  
**PRESIDENT**