

**IN THE COURT OF APPEAL**  
**[On appeal from the High Court]**

**Criminal Appeal No. AAU 123 of 2013**  
**[HC Appeal Case No. HAA 08 of 2013L]**

**BETWEEN** : **GUSTON FREDRICK KEAN**

**Appellant**

**AND** : **THE STATE**

**Respondent**

**Coram** : Hon. Mr. Justice Goundar

**Counsel** : Appellant in Person  
Mr. M. Korovou for Respondent

**Date of Hearing** : 4 July 2014

**Date of Ruling** : 24 July 2014

**RULING**

- [1] The appellant was tried and convicted on a charge of resisting arrest in the Magistrates' Court at Lautoka. He was sentenced to 12 months' imprisonment to be served consecutively with his pre-existing prison sentence.
- [2] The appellant appealed against his conviction and sentence to the High Court. On 23 October 2013, the High Court dismissed the appellant's appeal against conviction but allowed the appeal against sentence. The appellant's sentence was made concurrent with his pre-existing prison sentence effective from 23 October 2013.
- [3] On 8 November 2013, the appellant forwarded a Notice of Appeal against the High Court's judgment. However, that Notice was not submitted to the Court of Appeal Registry until 6 December 2013. Thus, the appeal is out of time by two weeks. But since the appellant had handed his Notice of Appeal to the Department of Corrections by 8 November 2013, I treat this appeal to have been filed within time.

- [4] The appellant's right of appeal is governed by section 22 of the Court of Appeal Act. Section 22 provides:

22. (1) *Any party to an appeal from a Magistrate's court to the High Court may appeal, under this Part, against the decision of the High Court in such appellate jurisdiction to the Court of Appeal on any ground of appeal which involves a question of law only...*

*Provided that no appeal shall lie against the confirmation by the High Court of a verdict of acquittal by a Magistrate's court.*

*[(1A) 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) The sentence was an unlawful one or was passed in consequence of an error of law; or*

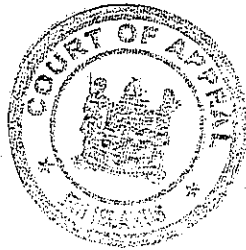
*(b) That the High Court imposed an immediate custodial sentence in substitution for a non custodial sentence.]*

- [5] The appellant's initial notice contained numerous grounds of appeal. However, at the hearing, his main complaint was that the High Court erred in law by making the commencement date of his sentence from the date the High Court judgment was delivered.
- [6] The commencement date of a sentence is the date the sentence is imposed, unless the sentence is made consecutive to a pre-existing sentence. In this case, the High Court judge made the appellant's sentence concurrent, but he then ordered the sentence to commence on the date the judgment was delivered. The effect of this order is that the appellant's sentence commences not on the date it was imposed, but on a future date.
- [7] Counsel for the State points out that although there is an arguable error in the judgment, the error does not affect the total sentence that the appellant has to serve. I accept this submission. The appellant is serving a sentence of 14 years' imprisonment effective from 8 August 2008. The sentence of 12 months' imprisonment is subsumed in the sentence of 14 years' imprisonment, regardless of whether the term of 12 months commences on 26 October 2010 or 23 October 2013.

[8] The error in the commencement date is only a technical error and can be corrected by issuing a fresh warrant of commitment making 26 October 2010 as the commencement date of the sentence. Otherwise, the appellant's appeal is bound to fail because he has no right to appeal under section 22 of the Court of Appeal Act.

**Result**

[9] The appeal is dismissed under section 35(2) of the Court of Appeal Act. A fresh warrant of commitment is issued making 26 October 2010 (the date the sentence was imposed) as the commencement date, concurrent to his pre-existing sentence.



*D. Goundar*

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Hon. Justice D. Goundar  
**JUDGE OF APPEAL**

**Solicitors:**

Appellant in Person  
Office of the Director of Public Prosecutions for State