IN THE COURT OF APPEAL
[On Appeal From The High Court]

CRIMINAL APPEAL NO: AAU108 OF 2011
(High Court Case No: HAC 33 of 2010)

BETWEEN	:	**FELIX RAM**
		Appellant
AND	:	**THE STATE**
		Respondent
Coram	:	Goundar JA
Counsel	:	Ms N. Nawasaitoga for the Appellant Mr. L. Fotofili for the Respondent
Date of Hearing	:	22 May 2014
Date of Ruling	:	2 June 2014

RULING

[1] The appellant was sentenced to 11 years' imprisonment with a non-parole period of 9 years after he pleaded guilty to a charge of digital rape of a child in the High Court at Lautoka. He seeks leave to appeal against sentence pursuant to section 21(1)(c) of the Court of Appeal Act. The test for leave is whether the sentencing judge arguably fell into one of the following errors:

(i) Acted upon a wrong principle.
(ii) Allowed extraneous matters.
(iii) Mistook the facts.
(iv) Failed to take into account some relevant considerations.

[2] The grounds of appeal are:

1. The Learned High Court Judge erred in law and in fact when he failed to deduct the time the Appellant spent in remand.

2. The Learned Trial Judge erred in fact and law when he failed to justify the imposition of a non-parole period considering the circumstances of the Appellant.

Ground 1 – Remand period

[3] It is apparent from the court record that the appellant spent some time in custody on remand in this case before he was released. The circumstance of the release is not clear. When the appellant appeared in the Magistrates' Court he was remanded in custody and his case was transferred to the High Court. When the case was called in the High Court, the appellant was not produced in court. A bench warrant was issued for his arrest, but that warrant was not executed for some time. After numerous adjournments, the appellant appeared in the High Court and the learned judge cancelled the bench warrant and released him without granting bail. In sentencing the appellant, the learned judge did not consider the issue of remand period and therefore this ground is arguable.

Ground 2 – Non-parole period

[4] Section 18(2) of the Sentencing and Penalties Decree gives the sentencing judge discretion not to fix a non-parole period if he considers that the fixing of the non-parole period is inappropriate considering the circumstances of the offender and the nature of offence. After sentencing the appellant to 11 years imprisonment the learned judge ordered that the appellant serve a minimum term of 9 years before being eligible for parole. The learned judge did not give any reasons for his decision to fix the non-parole period. Whether he should have directed his mind to section 18(2) of the Sentencing and Penalties Decree before fixing the non-parole period is a question of law. This ground is arguable.

Result

[5] Leave to appeal against sentence is granted.

COURT OF

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Hon. Justice D. Goundar
JUSTICE OF APPEAL