

IN THE COURT OF APPEAL, FIJI
[On Appeal from the High Court]

CRIMINAL APPEAL NO.AAU 0005 of 2020
[In the High Court at Suva Case No. HAC 246 of 2017S]

BETWEEN : **VAKENI DONU**

AND : **THE STATE** *Appellant*
Respondent

Coram : **Prematilaka, RJA**
Mataitoga, RJA
Dobson, JA

Counsel : **Mr. M. Fesaitu Appellant**
: **Ms. S. Shameem for the Respondent**

Date of Hearing : **01 July 2024**

Date of Judgment : **26 July 2024**

JUDGMENT

Prematilaka, RJA

[1] The appellant had been indicted in the High Court of Lautoka with two counts of rape contrary to section 207 (1) and (2) (a) and (3) of the Crimes Act, 2009 committed at Draubuta, Tokatoka, Tailevu in the Eastern Division on 02 August 2017.

[2] After the assessors unanimously opined that the appellant was not guilty of the charges levelled against him but guilty only of attempted rape in respect of both counts, the learned trial judge had agreed with the assessors, convicted the appellant for attempted rape and sentenced him on 04 April 2019 to 03 years of imprisonment on each count to run consecutively with a non-parole period of 05 years of imprisonment.

[3] Upon consideration of the appellant's appeal against conviction and sentence, a judge of this court dismissed his conviction appeal in terms of section 35(2) of the Court of Appeal but allowed leave to appeal for the sentence appeal.¹

[4] When the appeal was taken up for hearing into his sentence appeal before the Full Court on 01 July 2024, the appellant represented by his counsel indicated to court that he no longer wished to prosecute his appeal and tended a Form 3 dated 01 July 2024 in terms of Rule 39 of the Court of Appeal Act to abandon the sentence appeal.

[5] The court made relevant inquiries from the appellant in keeping with *Masirewa* guidelines **Masirewa v State** [2010] FJSC 5; CAV 14 of 2008 (17 August 2010) and the outcome of the inquiry could be summarised as follows:

1. The appellant reiterated his wish to abandon his sentence appeal.
2. The court found the application to abandon the sentence appeal voluntary and no pressure had been brought to bear upon the appellant to do so.
3. The court was informed that the decision to abandon had been considered beforehand and the appellant had received legal advice from the Legal Aid Commission regarding his decision to withdraw the appeal.
4. The appellant informed the court that the reason for the withdrawal of the sentence appeal is that he had already served his sentence and been released on 03 June 2024.
5. The court was informed that the appellant had fully understood the consequences of the withdrawal of the appeal *i.e.* if and when his application to abandon the appeal is allowed, the court will dismiss it and he cannot again pursue his appeal before this court.

¹ **Donu v State** [2021] FJCA 81; AAU0005.2020 (25 March 2021)

[6] Having been satisfied that the decision to withdraw the appeal had been made deliberately, intentionally and without mistake, this court decided to allow the abandonment of the sentence appeal. Accordingly, the court informed the appellant that his sentence appeal would stand dismissed.

[7] This judgment seeks to formalise the said decision of the court.

Mataitoga, RJA

[8] I concur.


Dobson, JA

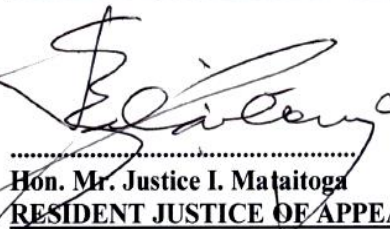
[9] I agree with the orders as made.


Orders of the Court:

1. The application to abandon the sentence appeal is allowed.
2. Appeal against sentence is dismissed.




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Hon. Mr. Justice C. Prematilaka
RESIDENT JUSTICE OF APPEAL


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Hon. Mr. Justice I. Mataitoga
RESIDENT JUSTICE OF APPEAL


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Hon. Mr. Justice R. Dobson
JUSTICE OF APPEAL

Solicitors:

Legal Aid Commission for the Appellant
Office of the Director of Public Prosecution for the Respondent