

IN THE HIGH COURT OF FIJI

AT SUVA

APPELLATE JURISDICTION

Miscellaneous Case No. HAM 42/2014

BETWEEN : SUKULU TIKOITOGA

Applicant

AND : THE STATE

Respondent

BEFORE : THE HON. JUSTICE P. MADIGAN

Counsel : Applicant in person

: Ms. S. Navea for State

Date of hearing : 12 March 2014

Date of judgment : 14 March 2014

JUDGMENT

1. The applicant applies for leave to appeal out of time a sentence of 5 months passed on him by a Magistrate in Suva on 17 December 2013. He had been convicted on his own plea of one count of disorderly conduct in a police station, contrary to s.47 of the Police Act, Cap 85 and one count of indecently annoying a person contrary to s.213(1)(a) of the Crimes Decree 2009.
2. The facts of the case were that on the 25th August 2012 at about 4am the applicant was brought into Samabula Police Station for non-payment of a taxi fare. He was drunk and yelling loudly and was spitting on the floor of the Police Station. He swore loudly at a police officer in the foulest of terms and continued to swear profusely even when told to stop. He challenged the officer to a fist fight. He was subdued and locked in a cell.
3. In sentencing the applicant the learned Magistrate took into account his early plea of guilty, his remorse and the fact that he was still young at 22 years of age. The aggravating features were the fact that the persons inconvenienced by his behaviour were the Police and the fact that he had 27 previous convictions, all current. She passed a sentence of 2 months for the disorderly conduct and concurrent 5 months. This total sentence of 5 months she made consecutive to the sentence he is currently serving.
4. The appeal was 28 days late and the reasons given by the applicant are that he appealed in time but the prison authorities were late in having the appeal filed in Court. The State had no objection to leave being given and the applicant appears to have a strong ground of appeal.

5. This Court granted the application for leave to appeal out of time and proceeded to hear the appeal against sentence
6. The appellant is aggrieved that the sentence was made consecutive to the term of imprisonment he was already serving.
7. Section 22 of the Sentencing and Penalties Decree 2009 stipulates that *'every term of imprisonment imposed on a person by a court must, unless otherwise directed by the Court, be served concurrently with any incomplete sentence of sentences of imprisonment.'* There are then listed in subsections (2) and (3) exceptions, none of which apply to this appellant.
8. Nowhere in her sentence does the Magistrate say why she is imposing a consecutive sentence and therefore the “*default*” position of concurrency under s.22 must be effective.
9. The appeal succeeds to the extent that the sentence of 5 months passed by the learned Magistrate is to be served concurrently with the sentence that the appellant is already serving.

P.K. Madigan
Judge

At Suva
14 March 2014