

IN THE HIGH COURT OF FIJI

AT SUVA

[CRIMINAL JURISDICTION]

CRIMINAL REVIEW NO. HAR 001 OF 2023

BETWEEN : **STATE**

AND : **JONA DAVONU**
PITA MATAIRAVULA

Counsel : Ms M Konrote for the State
Mr W Navuni for the 1st Respondent
Mr T Varinava for the 2nd Respondent

Date of Hearing : **5 July 2023**

Date of Judgment : **12 July 2023**

JUDGMENT

[1] This Court called for a review of an order backdating the commencement of the imprisonment sentence of the respondents.

[2] Section 260 (1) (a) of the Criminal Procedure Act governs the revisionary jurisdiction of this Court.

[3] Section 260 (1) (a) of the Criminal Procedure Act states:

The High Court may call for and examine the record of any criminal proceedings before any Magistrates Court for the purpose of satisfying itself as to- the correctness, legality or propriety of any finding, sentence or order recorded or passed.

- [4] The respondents were sentenced in the Magistrates' Court at Nasinu after they were tried and convicted with two others on a charge of sexual assault. A fifth accused had passed away before trial concluded.
- [5] On 8 August 2022, the learned magistrate sentenced each offender to 4 years imprisonment and made the following orders:
- For Sanita Lakenisici and Semisi Nadaku, there is a non-parole period of 36 months that they have to serve before eligible for parole.
- For Pita Matairavula and Jona Davonu, these sentencing remarks will be made concurrent to the term [he is – sic] serving. (underlining mine)
- [6] The pre-existing sentence of the respondents were for an offence in another case which was on appeal before the Supreme Court at the time (*Vereivalu v State* [2022] FJSC 48; CAV0005.2019 (27 October 2022)).
- [7] After the respondents were sentenced in this case, they appealed their conviction and sentence with others to the High Court.
- [8] When the respondents were not produced in court for their appeals, counsel for the State informed the court that they were released from prison by the Department of Corrections after the Supreme Court quashed their convictions on 27 October 2022 in *Vereivalu v State*.
- [9] It was discovered that the learned magistrate had backdated the commencement of the respondents' 4-year imprisonment sentence to 28 November 2016 on their committal warrants as follows:

"...4 yrs concurrent to the present serving term with effect from 28/11/16."

[10] When the sentences were pronounced on the respondents, the learned magistrate had not given any indication of his intention to backdate the commencement to 28 November 2016. He made the sentence concurrent with the respondents' pre-existing sentence. That was perfectly within his sentencing discretion.

[11] The effect of backdating the commencement of the sentence to 28 November 2016 was that the respondents were serving sentence for offence that they had not been convicted, and by the time they were convicted, they had already served their sentence. The conviction occurred on 28 February 2022 after the sentence had ended on 28 November 2020. When the Supreme Court quashed the respondents' other conviction on 27 October 2022, the Department of Corrections had no option but to release them, as according to their committal warrants they had served their 4-year imprisonment sentence by 28 November 2020.

[12] The question under review is whether the learned magistrate had power to backdate the commencement of the sentence of the respondents to take effect from 28 November 2016. The respondents through their counsel concedes that the magistrate did not have power to backdate their imprisonment sentence.

[13] Section 23 (1) of the Sentencing and Penalties Act states:

A sentence of imprisonment commences on the day that it is imposed.


[14] This section is clear. The commencement date for a prison sentence is the day it is imposed.

[15] In *DPP v Rasea* [1978] 24 FLR 91) Grant CJ held that:

A Magistrates Court has no power to backdate a sentence of imprisonment or to order it to run from any date earlier than the date on which the sentence imposed.

- [16] Both the Supreme Court and the Court of Appeal have endorsed this principle in numerous judgments (*Waqasaqa v The State* [2006] FJSC 6; CAV0009U.2005S (8 June 2006), *Koroicakau v State* [2005] FJCA 20; AAU0033.2005S (15 July 2005), *Ram v State* [2005] FJCA 29; AAU0017.2004S (29 July 2005) and *Vosalevu v The State* [2006] FJCA 29; AAU0002U.2005S (14 July 2006)).
- [17] For these reasons, I find that the order made in this case to backdate the commencement of the sentence of the respondents in their committal warrants is unlawful and invalid. By backdating the commencement date the learned magistrate was virtually punishing the respondents before guilt was established.
- [18] The order backdating the commencement of the sentence is reviewed and quashed. I make an order that the sentence to commence on the date they were imposed, 8 August 2022. Since the respondents were released from the prison on 27 October 2022 because of an error of law made by the sentencing magistrate, the remaining imprisonment term shall begin from the date of this judgment. A Committal Warrant is issued to that effect.
- [19] A copy of this judgment is to be forwarded to the learned magistrate for avoidance of the same mistake in future.




.....
Hon. Mr Justice Daniel Goundar

Solicitors:

Office of the Director of Public Prosecutions for the State
Legal Aid Commission for the Respondents