

Revisional Jurisdiction

Review No. 3 of 1981

IN THE MATTER of the
Criminal Procedure Code

AND IN THE MATTER of
Criminal Case No. 3810 of
1979 before the Magistrate's
Court at Suva

REGINAM

Complainant

and

- 1. MANOA KUBU
- 2. ESALA NAWAQALIVA
- 3. WAISALE TUIVUYA
- 4. JOSAIA KORONIKALOU
- 5. PATEMO SOVALEVU

Respondents

ORDER ON REVISION

On 7th December 1979 the respondents with four other persons were convicted on the first count, of escaping from lawful custody and on the second count, of assaulting a police officer in the due execution of his duties.

The respondents received sentences as follows -

	<u>Count 1</u>	<u>Count 2</u>
Manoa Kubu (Accused 2)	21 months	2 years
Esala Waqaliva (Accused 5)	21 months	2 years
Waisale Tuivuya (Accused 6)	21 months	2 years
Josaia Koronikalou (Accused 7)	21 months	2 years
Patemo Sovalevu (Accused 9)	21 months	2 years

The facts of this case are now very familiar to this Court having already dealt with two previous appeals arising

from the same incident (Criminal Appeal No. 21 of 1980 and Criminal Appeal No. 121 of 1980). Briefly the charges arose out of a mass escape from Suva Gaol on the 21st November 1979 and during the search for the escaped prisoners, Police Constable Isei was assaulted in what was described as an extremely unpleasant experience for him.

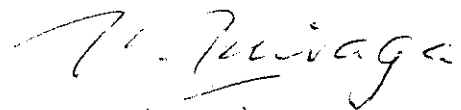
Livai Koroi (Accused 4), one of the culprits in the incident, was convicted with the respondents and sentenced to two years' imprisonment for escaping and two years' imprisonment for assaulting a police officer. The sentences were consecutive in effect making a total of four years' imprisonment. Koroi appealed out of time by leave of the learned Magistrate concerned who gave him leave on 7th October 1980, ten months after Koroi's conviction on the above charges. This was well in excess of the period prescribed for lodging an appeal, namely twenty-eight days. By granting leave well out of time it was clear that the learned Magistrate must have felt that his sentences on Koroi were rather high. In any event the Supreme Court in Koroi's appeal (Criminal Appeal No. 121 of 1980) reduced the sentences imposed on Koroi to nine months' imprisonment for escaping and fifteen months for assaulting a police officer.

In view of that judgment it became necessary to review the sentences imposed on the other respondents who were charged with Koroi and convicted on the same facts.

Mr. Gates, Crown Counsel, indicated that a review of sentences on the respondents would be justified because they appear to be on the high side. In these circumstances I am satisfied that the sentences imposed on the respondents be likewise varied as follows:

	<u>Count 1</u>	<u>Count 2</u>
Manoa Kubu (Accused 2)	9 months	15 months
Esala Waqaliva (Accused 5)	9 months	15 months
Waisale Tuivuya (Accused 6)	9 months	15 months
Josaia Koronikalou (Accused 7)	9 months	15 months
Patemo Sovalevu (Accused 9)	9 months	15 months

These sentences are to be served consecutively.


(T.U. Tuivaga)
Chief Justice

Suva,
18th March, 1981.