

IN THE COURT OF APPEAL, FIJI AT SUVA

CRIMINAL APPEAL NO. AAU0021/2000
(High Court Criminal Appeal No. HAA114 of 1999L)

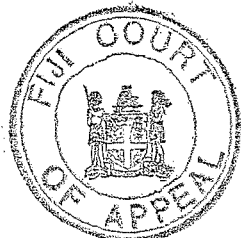
BETWEEN: JONE NAIVIRILALA Appellant

AND: THE STATE Respondent

SENTENCE APPEAL AND LEAVE TO APPEAL OUT OF TIME

1. Following a plea of guilty the appellant was convicted in the Magistrates' Court and sentenced to 4 months imprisonment on a charge of escaping from lawful custody, the sentence being cumulative upon a longer sentence which the appellant was serving at the time. His appeal against sentence was summarily dismissed by the High Court.
2. The appellant has lodged a document headed "Sentence appeal - Leave to appeal out of time". While, in this document, he again complains about the sentence, he also makes some complaints against the conviction, mainly that the charge of escaping from lawful custody was incorrect. In the appellant's view he should have been charged with resisting arrest.
3. To the extent that this document purports to be an appeal against conviction it is incompetent, since the appellant has appealed direct to the Court of Appeal, instead of to the High Court. If on the other hand it is regarded as an appeal against sentence, equally it is incompetent since by virtue of s.22 of the Court of Appeal Act a second appeal can only be on a question of law and the appellant's letter does not refer to any such question.
4. Accordingly, however the appellant's notice is regarded, there is no right of appeal, or to seek leave to appeal. Accordingly, acting under s.35(2) of the Court of Appeal Act as amended, I dismiss the appeal.

Dated at Suva this 10 October 2001.



~~Thomas Eichelbaum~~
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Thomas Eichelbaum
Justice of Appeal