

IN THE COURT OF APPEAL, FIJI ISLANDS
AT SUVA

CRIMINAL APPEAL NO. AAU0083 OF 2007

BETWEEN : **PONIPATE QORO** *Appellant*

AND : **THE STATE** *Respondent*

BEFORE THE HON. JUDGE OF APPEAL MR JUSTICE
JOHN E. BYRNE

Counsel : Appellant - In Person
K. Kurisaqila for the Respondent

Date of Hearing
& **Ruling:** 19th October 2007

R U L I N G

[1] The Appellant seeks leave to appeal to this Court from a Judgment of the High Court on appeal from the Magistrate's Court at Levuka where on the 3rd of August 2006, the Appellant pleaded guilty to one count of Escaping From Lawful Custody, contrary to Section 138 of the Penal Code Cap. 17. The Penal Code classifies this offence as a misdemeanour and by Section 47 of the

Code like other misdemeanours it is punishable with imprisonment for a term not exceeding two years.

- [2] On conviction, the Appellant was sentenced to 6 months imprisonment consecutive with a sentence of four years which he was currently serving for an offence of Robbery With Violence.
- [3] By Section 3(4) of the Court of Appeal (Amendment) Act No. 13 of 1998, appeals lie to this Court on a question of law only from final judgments of the High Court given in the exercise of the appellate jurisdiction of the High Court. There can be no appeal against sentence but only against conviction and on a ground or grounds which involve a question of law alone.
- [4] In this case the Appellant argues that the learned High Court Judge was wrong in imposing a 6 months consecutive sentence to that which he is already serving and says that this is harsh and excessive. That cannot be a ground for consideration by the Court for the reason which I have just given. This Court can only consider whether the Judge of the High Court committed some error of law.

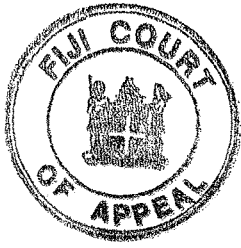
- [5] As to this, the Appellant argues that he has been punished twice for the same offence, an argument which he also put to the High Court. This is because he says the Prison Tribunal imposed a punishment on him of 1 month loss of remission for his escaping from lawful custody. The Prison Tribunal passed its sentence on the 13th of September 2006 whereas the 6 months imprisonment imposed by the Magistrates' Court was on the 3rd of August 2006.
- [6] The learned Judge recognized that on the principle of double jeopardy the two sentences could not stand together. There cannot be two punishments for the same offence, that is an offence arising from the same factual situation.
- [7] The normal sentence for this offence is 6 months imprisonment made consecutive to any term which the prisoner may be serving. The learned Judge, appreciating this, upheld Mr Qoro's appeal to the extent of substituting a 5 months sentence instead of the 6 months imposed by the Magistrates' Court. In doing so, the learned Judge followed this Court's decision in **Joeli Tawatatau v. The State** Criminal Appeal No. AAUOO2 of 2007 in which the Court held that where the same facts constitute the offence of escape under both the Penal

Code and the Prison Regulations, the prisoner is only liable to be sentenced once.

[8] The Appellant submitted to me that the Judge of the High Court should have made the sentence for escaping from lawful custody concurrent with that of the sentence he is currently serving.

[9] I cannot accept this argument. The reason why Courts impose custodial sentences for escaping from lawful custody is to underscore the need to deter prisoners from escaping when they are in lawful custody. This is clearly a matter of sensible public policy.

[10] I am satisfied that the Judge of the High Court committed no error of law in his Judgment. The Appellant informed me that he had not read the Judgment of the High Court and I therefore request the authorities to make one available to him and have it read to him in Fijian so that he may understand it. This should also be done with my Ruling today. The Order of the Court is that the application for leave to appeal is refused.



John E. Byrne

[John E. Byrne]

JUDGE OF APPEAL

At Suva

19th October 2007