

IN THE COURT OF APPEAL, FIJI ISLANDS
ON APPEAL FROM THE HIGH COURT OF FIJI

Criminal Appeal No. AAU 0033/07
(High Court Criminal Appeal HAA)

BETWEEN:

SAKIUSA BASA

Appellant

AND

THE STATE

Respondent

Coram: **Byrne JA**
 Pathik JA
 Mataitoga JA

Hearing: **27 August 2007**

Counsel: ***Appellant in person***
 Ms A Prasad for the Respondent

Judgment: **6 September 2007**

JUDGMENT OF THE COURT

1. Sakiusa Basa, the appellant appeals against conviction and sentence that were imposed by the Suva Magistrates' Court on 16

November 2006 on him in Case Ref No: 1314/06. The appellant had pleaded guilty to a charge consisting of one count of escaping from lawful custody, contrary to section 138 of the Penal Code, Cap 17 and he was sentenced to 3 months imprisonment consecutive to any term of imprisonment he was serving at the time.

Background Facts

2. This appeal has come to this court pursuant to section 22(1) of the Court of Appeal Act Cap 12, after the President of the court granted leave to appeal against conviction and sentence on 18 April 2007.
3. The appellant had appealed to the High Court on the same grounds and after a hearing in that court on 16 March 2007, the court ruled that the appeal be dismissed on 23 March 2007.
4. The High Court acknowledged that the appellant's main complaint was double jeopardy [double punishment], arising from the additional 3 months sentence imposed by the magistrates' court. This would only be correct if the Prison Tribunal had indeed imposed its own penalties for the same escaping from lawful custody incidents that were the subject of the charge in the Magistrate Court referred to above.
5. In this appeal the appellant has included a copy of the Charge Sheet for the offence of escaping from lawful custody under the Prison Act, with the Petition of Appeal. It shows that the proceeding of the Prison Tribunal took place on 4 July 2006.

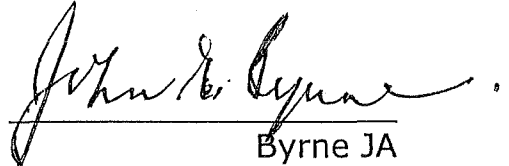
However, it is unclear on the face of the charge statement whether there were any penalties imposed.

6. When the appeal papers were circulated, the court had asked through the registry for the DPP to obtain an affidavit covering the details of the proceeding of the Prison Tribunal that convicted the appellant on 4 July 2006 and remove 3 months from his remission of sentence entitlement.
7. The court is now in receipt of an affidavit sworn by Chief Prison Officer Frank Hazelman [Referred to as the Hazelman Affidavit] dated 22 August 2007.
8. Paragraphs 4 and 5 of the Hazelman affidavit read:
 4. That there is a charge sheet relating to two offences committed on 9 May 2006 in relation to the appellant. I confirm that this is at page 3 of the Court record
 5. That these two offences were not proceeded with any further by the prison tribunal. There is no record of any punishment for the two offences.
9. On the basis of the above evidence, when the appellant appeared before the learned magistrate on 16 November 2006, he was only charged by the prison authorities but there was no punishment imposed and there has never been any punishment imposed since the Magistrate Court hearing. This means that that there is no basis for the appellant to claim there was double punishment in

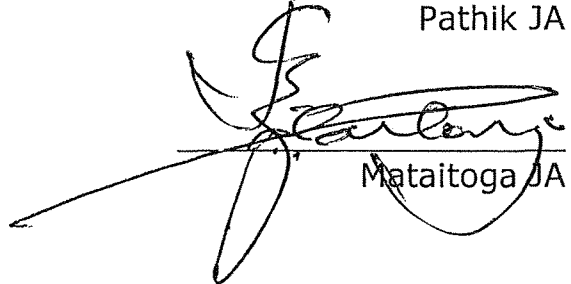
this case. As this was the only basis on which the conviction in this appeal may be overturned, the appeal fails.

10. Appeal against conviction is dismissed as having no merit
11. We have reviewed the sentence of 3 months imprisonment to be served consecutively by the appellant imposed by the magistrates' court. We conclude that the sentence is properly constituted in law. If anything, it may be on the lenient side for similar offences.
12. The appeal against sentence also fails and is accordingly dismissed.




Byrne JA


Pathik JA


Maitoga JA