

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

CRIMINAL APPEAL NO. AAU0092 OF 2008S  
(High Court Criminal Action No. HAA 47 of 2008S)

BETWEEN:            ISIMELI SERESERE

*Appellant*

AND:                THE STATE

*Respondent*

In Chambers:        Randall Powell, Justice of Appeal

Hearing:            Wednesday, 5<sup>th</sup> November 2008, Suva

Counsel:            Appellant in Person  
                             A. Driu for the Respondent

Date of Ruling:     Wednesday, 5<sup>th</sup> November 2008, Suva

---

**RULING**

---

[1] At some stage in 2007 (either in March or September, it is not possible to be sure from the Court Record), Isimeli Seresere ("Mr Seresere") pleaded guilty before the Nadi Magistrates Court to rape and was sentenced to five years in prison. Mr Seresere was about 24 years old at the time. The victim was his girlfriend who was under the age of 18 years.

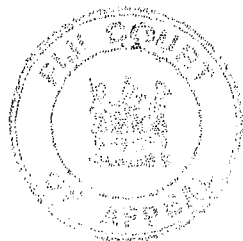
[2] On 30 June 2008 the High Court heard an appeal against sentence. Mr Seresere said that he was married, a first offender, looking after an elderly family and was the

sole bread-winner. He had pleaded guilty, was remorseful and submitted that 5 years "was too much".

- [3] The High Court (Govind J) dismissed the appeal holding that *"Five years for rape, no matter what the mitigating circumstances, cannot be termed manifestly harsh and excessive even for a first offender."*
- [4] On 12 September 2008 an application for leave to appeal out of time was received by the Court of Appeal Registry. The reason for the delay was said to be Mr Seresere's total ignorance of legal matters and the absence of a legal aid representative.
- [5] Section 26(1) of the Court of Appeal Act provides:
- (1) *Where a person convicted desires to appeal under this Part to the Court of Appeal, or to obtain leave of that Court to appeal, he shall give notice of appeal or notice of this application for leave to appeal in such manner as may be directed by the rules of Court within thirty days of the date of conviction or decision. Except in the case of a conviction involving sentence of death, the time within which notice of appeal or notice of an application for leave to appeal may be given, may be extended at any time by the Court of Appeal.*
- [6] The appeal or leave appeal is about one month out of time but the practice of the Court has been to accept that delays of up to three months are excusable where the appellant has been in prison since conviction. Accordingly leave to appeal out of time will be given unless the appeal has no merit.
- [7] The proposed grounds of appeal are for the most part an incomprehensible jumble including an appeal to the *"Classic principles" of Retribution, Deterrence, Prevention and Rehabilitation*". The comprehensible appeal points are that he the complainant consented therefore he was not guilty rape and that the Courts below failed to take into account that he pleaded guilty on the first available opportunity.

[8] The first of these appeal points is not available because Mr Seresere did plead guilty both before the Magistrate and before the High Court. The second point has no merit because the early guilty plea was considered and is reflected in the lenient sentence.

[9] Leave to appeal out of time is refused because although the delay in bringing the application can be explained the proposed appeal has no merit and is bound to fail.



*Randall Powell*

---

**Randall Powell**  
**Justice of Appeal**

**Solicitors:**

**Appellant in Person**  
**Office of the Director of Public Prosecutions, Suva for the Respondent**