

**IN THE FIJI COURT OF APPEAL**  
**[On Appeal From The High Court]**

**Criminal Appeal No. AAU094 of 2013**  
**[High Court Case No. HAM133/12S]**

**BETWEEN** : VILIAME DAUNABUNA  
*Appellant*

**AND** : THE STATE  
*Respondent*

**Coram** : Hon. Mr. Justice Goundar

**Counsel** : Appellant in person  
Mr. L. Fotofili for Respondent

**Date of Hearing** : 16 June 2014

**Date of Ruling** : 25 July 2014

**RULING**

- [1] This is an appeal from a judgment of the High Court in its appellate jurisdiction.
- [2] The appellant was convicted of burglary and theft after he pleaded guilty to the charges in the Magistrates' Court. He was sentenced to 18 months' imprisonment for burglary and 18 months' imprisonment for theft. The sentences were made consecutive. The total sentence was 3 years' imprisonment.
- [3] The appellant filed an untimely appeal against sentence to the High Court. The appeal to the High Court was out of time by 3 months. The learned High Court judge found the delay was unjustified and the appeal lacked merit. The application for an extension of time was refused by the High Court.

[4] The appellant raises no issue regarding the principles that govern an application for an extension of time to appeal. His main contention is that his sentences should have been made concurrent because the offences were based on the same facts.

[5] The appellant's right of appeal to this Court is governed by section 22 of the Court of Appeal Act. Section 22 provides:

"22(1) Any party to an appeal from a magistrate's court to the [High Court] may appeal, under this Part, against the decision of the [High Court] in such appellate jurisdiction to the Court of Appeal on any ground of appeal which involves a question of law only ....

Provided that no appeal shall lie against the confirmation by the [High Court] of a verdict of acquittal by a magistrate's court.

[(1A) No appeal under sub section (1) lies in respect of a sentence imposed by the High Court in its appellate jurisdiction unless the appeal is on the ground –

(a) The sentence was an unlawful one or was passed in consequence of an error of law; or

(b) That the High Court imposed an immediate custodial sentence in substitution for a non-custodial sentence]."

[6] Whether the sentences should have been made concurrent does not involve a principle of law alone. There is no hard and fast rule regarding whether two or more sentences should run concurrently or consecutively. The final sentence should reflect the total criminality involved. This is known as the proportionality principle in sentencing. In the present case, the sentence of three years' imprisonment reflected the total criminality involved, given that the appellant was a recidivist with 56 previous convictions.


[7] I am satisfied that this appeal is bound to fail because the appellant has no right of appeal. The appellant further seeks bail pending appeal. The test for bail pending appeal is that the appeal must have every chance of success. Since I have concluded that this appeal is bound to fail, the application for bail must fail as well.

**Result**

[8] Bail pending appeal refused.

[9] The appeal is dismissed under section 35 (2) of the Court of Appeal Act.



  
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Hon. Justice D. Goundar  
**JUDGE OF APPEAL**

At Suva  
25 July 2014

**Solicitors:**

Appellant in person  
Office of the Director of Public Prosecutions for State