

IN THE COURT OF APPEAL
ON APPEAL FROM THE HIGH COURT

CRIMINAL APPEAL NO: AAU 52 of 2011
(High Court HAA 6 of 2011)
(Magistrates Court No.418 of 2010 at Lautoka)

BETWEEN : DWAYNE HICKS
Appellant

AND : THE STATE
Respondent

Coram : Calanchini P

Counsel : No appearance for the Appellant
Mr L Burney for the Respondent

Date of Hearing : 24 July 2015

Date of Ruling : 30 October 2015

RULING

[1] In the Magistrates Court at Lautoka the Appellant pleaded guilty to one count of escaping from lawful custody “*contrary to section 196 of the Criminal Procedure*

Decree 2009” and to one count of serious assault “*contrary to section 277(b) of the Criminal Procedure Decree 2009.*” On 14 October 2010 he was sentenced to a term of imprisonment of 12 months on each count to be served consecutively with a non-parole term of 15 months.

- [2] The Appellant filed a timely appeal against sentence in the High Court. In a judgment delivered on 27 April 2011 the learned High Court Judge dismissed the Appellant’s appeal on the basis that none of the grounds of appeal had been made out.
- [3] By letter received in the Court of appeal on 11 May 2011 the Appellant gave timely notice of his appeal against sentence. The appeal is against the appeal judgment of the High Court. The appeal was an appeal brought under section 22 of the Court of Appeal Act Cap 12 (the Act). Although the grounds of appeal related to sentence, by the time the appeal was listed for mention before a justice of appeal, the issue raised by the Appellant, related to the wording of the statement of offence in respect of both charges. There was an error in the sense that the offences were stated to be contrary to the Criminal Procedure Decree 2009 when each offence was contrary to the Crimes Decree 2009.
- [4] This appeared to be the only matter raised by the Appellant on 8 July 2013 before the Justice of Appeal. The learned Judge granted leave to enable the appeal to proceed before the Full Court on the ground of defective charges.
- [5] A notice of callover which was fixed for 24 July 2015 was served on the Appellant on 22 May 2015. There was no appearance by or on behalf of the Appellant on that day. It would appear that the Appellant had been released from prison prior to 24 July 2015. He had failed to leave contact details and had made no arrangements for an appearance to be entered at the callover on 24 July 2015. He has made no contact with either the Registry or the Respondent since his release. It would appear that he is

no longer interested in pursuing his appeal which under the circumstances is regarded as vexatious and dismissed pursuant to section 35(2) of the Court of Appeal Act.

Order:

Appeal dismissed.



W. Calanchini

**Hon. Mr Justice W.D. Calanchini
PRESIDENT, COURT OF APPEAL**