IN THE COURT OF APPEAL, FIJI
[On Appeal from the High Court of Fiji]

CRIMINAL APPEAL NO.AAU0026 OF 2014
(High Court Criminal Case No. HAC043 of 2012)

BETWEEN	:	**SEFANAIA SIKI**
		Appellant
AND	:	**THE STATE**
		Respondent
Before	:	The Hon. Justice Daniel Goundar
Counsel	:	Mr. J. Savou for the Appellant Ms P. Madanavosa for the Respondent
Date of Hearing	:	5 July 2016
Date of Ruling	:	15 July 2016

RULING

[1] This is an untimely application for leave to appeal against sentence only. On 24 October 2013, the appellant was sentenced to a total term of 17 years' imprisonment with a non-parole period of 16 years after he was convicted on 4 counts of rape and 1 count of assault occasioning actual bodily harm in the High Court at Labasa. He filed his appeal on 25 March 2014. The appeal is late by about 4 months. The appellant attributes the delay to his lack of education and incarceration. In my opinion these are not compelling reasons not to comply with the statutory time period to file an appeal. When the delay is substantial, the question is whether there is a ground of appeal that will probably succeed (***Rasaku v State*** unreported Cr App No CAV0009 of 2009; 24 April 2013).

[2] Counsel for the appellant has made no attempt to perfect the grounds of appeal filed by the appellant in person. The grounds of appeal in the words of the appellant are:

1) That the Judge erred in law for judging and sentence the appellant under the Crimes Decree he already highlighted that the offence took place prior to the commencement of the Decree.

2) That the Trial Judgment and sentence erred because it contravened section 392 and 393 of the 2009 Crimes Decree.

3) That the trial Judge erred when high starting point used derives from the Crimes Decree because Section 392 state when imposing of any offence the Courts shall apply the penalty prescribed for the Offence by the Penal Code.

4) That the trial Judge erred when he did not deduct remand period according to Section 24 of the Crimes Decree.

5) That the appellant feels being prescribed and victimised for such an excessive and harsh sentence by the trial Judge.

6) That the trial Judge biased decision contributed to the high sentence after favouring the option of the minority assessor.

7) The appellant applies for the harsh sentence be served on parole.

[3] Grounds 1 - 3 were argued together. The appellant contends that on count 1 (rape) he was punished under the Crimes Decree when the charge was under the Penal Code. On count 1, the appellant was charged under the Penal Code because the offence was committed before the Crimes Decree came into effect. The Crimes Decree came into force on 1 February 2010. The remaining three counts of rape were charged under the Crimes Decree because the offences were committed after 1 February 2010. Under both the Penal Code and the Crimes Decree the maximum penalty for rape is life imprisonment. On each count of rape the appellant was sentenced to 17 years imprisonment, to be served concurrently. When an offender is sentenced for multiple offences, it is the total sentence that matters and not the individual sentence. The appellant raped his own biological juvenile daughter on four occasions over a period of years. There is no fault in the sentencing discretion in that regard because the total sentence reflected the overall criminality involved. The trial judge did consider the appellant's remand period as part of the mitigating factors and made downward

adjustment in the sentence. No submissions were made on grounds 5-7. I am not convinced that the Full Court would impose a different sentence.

Result

[4] Enlargement of time refused.

Leave refused.

.....

Hon. Mr. Justice Daniel Goundar

JUSTICE OF APPEAL

Solicitors:

Office of the Legal Aid Commission for Appellant

Office of the Director of Public Prosecutions for State