

IN THE HIGH COURT OF FIJI
AT SUVA
[MISCELLANEOUS JURISDICTION]

CRIMINAL CASE NO: HAM. 10 of 2016

SOLOMONI QURAI

V

STATE

Counsel : Ms. L. Raisua for Applicant.
Mr. S. Vodokisolomone for Respondent.

Date of Hearing : 26th July 2016.

Date of Judgment : 29th July 2016.

RULING ON LEAVE TO APPEAL OUT OF TIME

1. This is an application for leave to appeal out of time against the sentence imposed on the applicant by the Magistrate Court on 30/07/2013. The applicant has taken steps to file a notice of appeal prepared without the assistance of a lawyer dated 19/10/2015 which was received by the high court on 15/11/2015. Thereafter, with the assistance of the Legal Aid Commission, a supporting affidavit of the applicant was filed on 25/05/16. In the said supporting affidavit the applicant says that he was aware of the time limit to prefer an appeal, but he was waiting for the Legal Aid Commission to take necessary action as he advised the legal aid lawyer who appeared for him in the Magistrate Court to appeal against the sentence.

2. This application has been filed with a delay of about 2 years and 2½ months. The respondent does not object for leave to appeal out of time being granted in this case. The respondent in fact concedes that the main ground of appeal raised by the applicant has merit.
3. Though the more pragmatic approach would have been to consider both leave to appeal out of time and the appeal together which was also the desire of both parties, I am unable to do so as this file bears a miscellaneous number (HAM) and therefore this is not an appeal file (HAA).
4. The main ground of appeal against the impugned sentence is that the learned magistrate fixed the applicant's sentence to run consecutive to the life sentence he was already serving.
5. The applicant was charged with the offence of damaging property contrary to section 369 of the Crimes Decree 2009. The property in question was the property of the Fiji Correction Service. The applicant pleaded guilty to the offence and was sentenced to 6 months imprisonment.
6. In terms of section 22(4) of the Sentencing and Penalties Decree 2009 *'every term of imprisonment imposed on a prisoner by a court in respect of a prison offence or an escape offence must, unless otherwise directed by the court based on exceptional circumstances, be served consecutively on any uncompleted sentence of imprisonment'*.
7. The main issue raised in this case is concerning the effect of the said section 22(4) of the Sentencing and Penalties Decree on cases where the uncompleted sentence is a sentence of life imprisonment. In my view, this issue warrants consideration notwithstanding the substantial delay.
8. Considering the factors to be taken into account in respect of an application for extension of time as outlined in the case of *Kumar v. State; Sinu v. State* [2012] FJSC 17, I consider it appropriate to grant leave to appeal out of time to the applicant in this case.

9. Therefore leave is granted to appeal out of time.



A handwritten signature in blue ink, appearing to read "Vinsent S. Perera".

Vinsent S. Perera

JUDGE

Solicitor for the Applicant : Legal Aid Commission, Suva
Solicitor for the State : Office of the Director of Public Prosecution, Suva.