

IN THE HIGH COURT OF FIJI  
CRIMINAL JURISDICTION  
AT LAUTOKA

CRIMINAL CASE: HAA 30 OF 2016

BETWEEN : JOHN HARISH LAL

APPELLANT

AND : THE STATE

RESPONDENT

Counsel : The Appellant in person  
Ms S Kiran for the Respondent

Date of Judgment : 30th of January 2017

JUDGMENT

1. The Appellant was charged in the Magistrates' Court of Lautoka for one count of Escaping from Lawful Custody, contrary to Section 196 of the Crimes Decree. The Appellant was first produced before the Magistrates Court on the 19th of May 2014. The Appellant pleaded guilty for the offence on the 14th of June 2016. The learned Magistrate then sentenced him for a period of nine months imprisonment to be served consecutive to his current sentence on the 22nd of June 2016. Aggrieved with the said sentence, the Appellant appeals to this court on the following ground, that is;

- i) *The learned Magistrate erred in law when failing to consider the 2 years remand period when he sentenced your petitioner to a term of imprisonment which is harsh and excessive,*

2. The ground of appeal constitutes two main components. The first is that the learned Magistrate failed to consider two years period that the Appellant has spent in remand custody in the sentence. The second component is that the sentence is harsh and excessive.
3. Section 24 of the Sentencing and Penalties Decree states;  
  
*“If an offender is sentenced to a term of imprisonment, any period of time during which the offender was held in custody prior to the trial of the matter or matters shall, unless a court otherwise orders, be regarded by the court as a period of imprisonment already served by the offender”*
4. Accordingly, the sentencing court requires to take into consideration the time spend by the accused in remand custody prior to the hearing of the matter in sentencing.
5. The Appellant contends that he was remanded by the learned Magistrate on the 19th of May 2014 and kept in remand custody until he was sentenced on 22nd of June 2016. Hence, he is entitled for a discount in the sentence for the time he had spent in remand custody.
6. The Respondent submits that the Appellant had multiple of pending cases and had been remanded for them during the period that is under review of this appeal. In the report filed by the Respondent states that the Appellant was in remand for this particular case only for a month. He had been remanded by the Magistrates’ Courts of Suva and Nadi for two other matters. Meanwhile the Appellant admitted in his affidavit that he was given a sufficient discount by the Suva Magistrates’ Court for the time he had spent in remand custody during the period between 2014 to 2016. Accordingly, it appears that the Appellant had been given sufficient discount by the Suva Magistrates’ Court for the time he had spent in remand custody during the said period. It has been submitted by the Respondent, which was admitted by the Appellant, that the Appellant has now been

convicted and sentenced by the Suva Magistrates' Court for two other cases prior to the sentencing for this matter.

7. The Fiji Court of Appeal Vasuca v State [2015] FJCA 65; AAU011.2011 (28 May 2015) held that;

*"In the present case, the appellant was arrested on 16 May 2009. When the appellant was presented in the Magistrates' Court together with his co-accused on 9 June 2009, the learned Magistrate made a note in the court record that the appellant was on remand in custody in other cases. Subsequently, the appellant became a serving prisoner in an unrelated case while this case was pending for trial. It is not in dispute that currently the appellant is serving multiple sentences, some of which were imposed after he was sentenced in this case. At this stage, this Court has no jurisdiction over the subsequent sentences imposed on the appellant. The appellant told this Court that his subsequent sentences are subject of appeals. Because the appellant was remanded in multiple cases at the same time, there is a possibility that his total remand period has been taken into account in other sentences that were imposed after the sentence in the present case was imposed. In any event, 2 months is not a significant period when compared with the term of 14 years' imprisonment that the appellant is serving. If the appellant would have thought that his remand period was significant, then he would have highlighted that fact to the trial judge instead of electing to remain silent and offer no assistance in mitigation.*

8. In view of the reasons discussed, I find the contention made by the Appellant pursuant to Section 24 of the Sentencing and Penalties Decree has no merit and fails accordingly.
9. I now draw my attention to the next contention of the Appellant that the sentence is harsh and excessive.

10. The Fiji Court of Appeal in Tuibua v State [2008] FJCA 77; AAU0116.2007S (7 November 2008) held that the tariff for the offence of Escaping from Lawful Custody under the Penal Code is between six months to twelve months imprisonment. The Fiji

Court of Appeal held that;

*"Escaping from lawful custody is a misdemeanor. It is an offence under the provisions of s138 of the Penal Code. The maximum penalty is not prescribed in s138 but by virtue of the provisions of s47 of the Penal Code, which section prescribes penalties for misdemeanors, the maximum penalty for this offence is stated to be two years imprisonment.*

*Counsel for both the parties to this appeal have helpfully provided us with copies of dozens of previous cases from the present time and well into the past where judges in Fiji have sentenced offenders for the offence of escaping from lawful custody. We feel there is little to be gained in exhaustively reviewing these cases because the facts and circumstances of each case are quite obviously different. Nevertheless, it is quite clear from these previous cases that High Court judges and magistrates regard the usual tariff for the offence of escaping from lawful custody as between 6 and 12 months imprisonment. Apparently this Court has not before been called upon to consider the appropriateness of this usual tariff. In order to assist uniformity and consistency in sentencing for the offence of escape from lawful custody, we feel it appropriate to state that a sentence of between 6 and 12 months imprisonment is an appropriate usual tariff for this type of offence. But as with all tariffs for all offences there will always be cases which because of their peculiar facts fall outside the usual permissible range of sentences for this type of offence. In approving the usual tariff we are in no way intending to put a straight jacket on sentencing judges and magistrates.*

11. The maximum penalty for the offence of Escaping from Lawful Custody under the Penal Code was two years, which is similar to the maximum penalty for the offence of

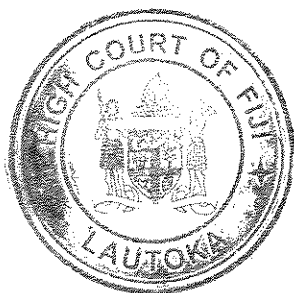
Escaping from Lawful Custody under the Crimes Decree. Hence, I find the applicable tariff for Escaping from Lawful Custody is between six months to twelve months imprisonment.

12. Having considered the aggravating and mitigating factors, the learned Magistrate has imposed nine months imprisonment, which is within the above discussed tariff limit.
13. Section 22 of the Sentencing and Penalties Decree provides the procedure of imposition of concurrent and consecutive sentences, where it states that;
  - i) *Subject to sub section (2), every term of imprisonment imposed on a person by a court must, unless otherwise directed by the court, be served concurrently with any uncompleted sentence or sentences of imprisonment,*
  - ii) *Sub-section (1) does not apply to a term of imprisonment imposed-*
    - a) *in default of payment of a fine or sum of money,*
    - b) *on a prisoner in respect of a prison offence or as a result of an escape from custody,*
14. The learned Magistrate has accurately applied the Section 22 ( 2) (b) of the Sentencing and Penalties Decree in imposing a consecutive imprisonment period as the Appellant was sentenced for an offence of escape from custody.
15. Accordingly, I do not find any merit in the contention that the sentence is harsh and excessive.
16. In conclusion, I refuse and disallow this petition of appeal.

17. Thirty (30) days to appeal to the Fiji Court of Appeal.

*R. D. R. Thushara Rajasinghe*

*Judgment delivered  
by Madegon J  
in Court on 31.01.17.*



R. D. R. Thushara Rajasinghe

Judge

At Lautoka

30th of January 2017

Solicitors : Office of the Director of Public Prosecutions