

IN THE HIGH COURT OF FIJI AT SUVA
CIVIL JURISDICTION

Civil Action No. HBM 131 (A) of 2017

BETWEEN : ARNEEL CHANDRA GOUNDAR

APPLICANT

AND : FIJI HUMAN RIGHTS AND ANTI-DISCRIMINATION COMMISSION

AS INTERESTED PARTY AMICUS CURIAE

AND : THE STATE

FIRST RESPONDENT

AND : COMMISSIONER OF THE FIJI CORRECTIONS SERVICE

SECOND RESPONDENT

Coram : The Hon. Mr Justice David Alfred

: The Applicant in person.

Counsel : Ms S Chand for the First and Second Respondents
: Mr W. Tokalau for the Amicus Curiae

Date of Hearing : 30 April 2018

Date of Judgment : 1 May 2018

JUDGMENT

1. This is the Applicant's Notice of Motion for:
 - (a) A Declaration that the Applicant's Constitutional rights – Chapter 2, Bill of Rights – has been violated.
 - (b) An Order for the Respondents to give (him) the full benefit and rights under the Fiji Corrections Act (Act) section 27(1) & (2) for a date of release.

2. It is supported by the Applicant's affidavit in which he deposes as follows:
 - (1) He is serving life imprisonment for murder with a minimum term of 15 years.
 - (2) He is not benefitting from a lawful discharge date.
 - (3) His sentence is unlawfully interpreted as unknown.

3. The affidavit in response is affirmed by Tom Smith, the officer in charge of the Nasinu Corrections Centre who says as follows:
 - (1) The Applicant does not have a set discharge date as he is serving a life sentence.
 - (2) He must apply for a Presidential pardon and he will remain as a convicted prisoner in the Corrections Centre until he is pardoned by the President.

4. At the commencement of the hearing the Applicant informed me that he would leave it to the Court to decide his Application.

5. Ms Chand informed the Court she would rely on her submission made in Civil Action No HBM 131 (B) of 2017, mutatis mutandis. She referred to rule 3(2) of the High Court (Constitutional Redress) Rules 2015 and said there were no exceptional circumstances provided. This application was filed on 16 October 2017 whereas the Applicant was sentenced on 7 February 2006 and the Applicant delayed in not bringing this application before April 2006. On limitation the application should fail. Ms Chand also said s.27(1) of the Act does not apply to the Applicant as he has been sentenced to life imprisonment. The Applicant had an alternative remedy which is to petition the Mercy Commission. He failed to

plead which particular right under the Bill of Rights had been breached. Finally there was no reasonable cause of action. The Court should dismiss the application.

6. Counsel for the Amicus Curiae said that the Applicant had 2 alternative remedies. The Human Rights Commission has a right under s.45(4)(a) of the Constitution to make this Application to the Court for redress.
7. The Amicus Curiae obviously thought he would assist the Court by calling its attention to the following points of law and fact that would appear to have been overlooked (Osborn's Concise Law Dictionary). His written submission contained the following salient points:
 - (1) It is the statutory duty of the Fiji Corrections Service (FCS) under s.49 of the Correction Services Act (CSA) to establish the Parole Board and failing to ensure that the Board is in operation is a failure on the part of the FCS (para 21).
 - (2) The High Court must direct the Respondents to fulfill their obligations prescribed by s.49 of the (CSA) (para 24).
 - (3) The Application be struck out as there is an alternative remedy available through the parole procedures (para 25(i)).
8. I informed I would take time for consideration. Having done so, I now deliver my decision.
9. The crux of the Application, it appears to me, is that the Applicant considers the root of the matter is the 15 years minimum term and not the life sentence.
10. So I turn to s.33 of the Penal Code which states as follows:

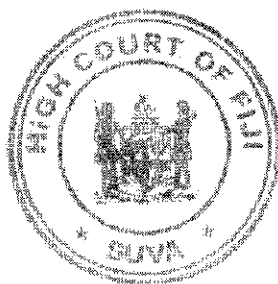
"Where an offence in any written law prescribes a maximum term of imprisonment of ten years or more, including life imprisonment, any court passing sentence for such offence may fix the minimum period which the court considers the convicted person must serve".

11. I then turn to the Judgment of the Court of Appeal in the appeal brought by the Applicant against conviction and sentence. In para (1) it is stated he was convicted of murder and sentenced on 7 February 2006 to life imprisonment with a recommended minimum term of 15 years. In para [26] it is stated the Court dismissed the appeals and fixed the minimum period he "shall serve at fifteen years".
12. I do not see any conflict with s.27(2) of the CSA which provides "For the purposes of the initial classification a date of release for each prisoner shall be determined which shall be calculated on the basis of a remission of one-third of the sentence for any term of imprisonment exceeding one month".
13. And, I do not see how this helps the Applicant. I reiterate he was sentenced to life imprisonment and not to 15 years imprisonment.
14. Once the distinction between sentence and minimum term is recognized the Application collapses. In any event, the Court of Appeal ordered he shall serve a minimum period of 15 years and today only 12 years have elapsed. The correct legal position is there can be no consideration of release until the 15th anniversary of the sentence in the year 2021.
15. I am fortified by the decision of Goundar JA in Suresh Chandra AND The State : Criminal Appeal No. AAU 0083 of 2012 (Ruling dated 6 June 2014). In para [11] his Lordship said "After sentencing the appellant to life imprisonment, the learned trial judge imposed a non-parole period of 18 years. The power to impose a non-parole period is given to the courts by the Sentencing and Penalties Decree. The appellant's contention that in cases of life imprisonment, non-parole period serve no purpose is not arguable. The offenders who are sentenced to life imprisonment are eventually released on licence. The decision to release the offenders on licence is made by the Executive. The courts play no role in the Executive's decision to release an offender on licence. But the courts have discretion under the Sentencing and Penalties Decree to prevent an early release on licence by imposing a non-parole period. What this means is that the offender will have to serve the non-parole period before any release by the Executive is considered. That is the purpose of imposing a non-parole period. The sentence appeal is not arguable".

16. My judgment is as follows:

- (1) The Application is premature, misconceived in law and fact and is hereby dismissed.
- (2) In the circumstances there shall be no order as to costs.

Delivered at Suva this 1st day of May 2018.



A handwritten signature in black ink, appearing to read "David Alfred", written over a dotted horizontal line.

David Alfred

JUDGE

High Court of Fiji