

## IN THE HIGH COURT OF FIJI AT LABASA

In the matter of an appeal under section 246(1) of the Criminal Procedure Act 2009.

[APPELLATE JURISDICTION]

**MOHD FAZIL FAIYUM**

**Appellant**

**CASE NO: HAA. 21 of 2019**

[MC Labasa Crim. Case No. 167 of 2017]

**Vs.**

**STATE**

**Respondent**

**Counsel** : Appellant in person  
Ms. A. Vavadakua for the Respondent

**Hearing on** : 18 September 2019

**Judgment on** : 20 September 2019

### JUDGMENT

1. The above named appellant was convicted by the Magistrate Court at Labasa for the offence of *absconding bail condition* contrary to section 26 of the Bail Act 2002 as amended by section 2(1) of the Bail (Amendment) Decree 2012, upon him pleading guilty to the charge. He was accordingly sentenced on 16<sup>th</sup> April 2019 to a term of 03 months imprisonment.


2. The Learned Magistrate has not mentioned in the decision on sentencing whether the sentence should be served concurrently or consecutively. However, at page 31 of the relevant court record, it is clearly stated that the sentence should run concurrently (with any uncompleted sentence of imprisonment).
3. The appellant had submitted a letter to the High Court Registry which was regarded as an application for appeal out of time where in essence he alleges that the Learned Magistrate failed to order the sentence to run concurrently. Later on the appellant had filed written submissions where he states that the Learned Magistrate ordered his sentence to run concurrently. He submits that he was supposed to be discharged on 16/08/19, but he is not being discharged by the 'Prisons Department'.
4. The appeal was heard on 18/09/19. During the hearing the appellant agreed that there is no error in the sentence delivered by the Learned Magistrate. The counsel for the respondent was also of the same view.
5. Section 22(1) of the Sentencing and Penalties Act states thus;

*22. – (1) 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.*

6. It is manifestly clear that when a sentencer does not expressly direct otherwise in the sentencing decision, the relevant sentence is to be served concurrently with any uncompleted sentence in view of the above provisions of section 22(1). Therefore, in the instant case, the appellant's sentence should run concurrent with the sentence he was already serving as at 16/04/19 as the Learned Magistrate has not directed otherwise.
7. The Fiji Corrections Service is bound by the clear provisions of section 22(1) of the Sentencing and Penalties Act above. If what the complainant says it true, his

present incarceration amounts to an unlawful detention. However, in this case, I do not exercise the jurisdiction to look into the said claim of the appellant. The appellant has invoked the appellate jurisdiction of this court under section 246 of the Criminal Procedure Act and accordingly, the jurisdiction of this court is confined to the decision of the Learned Magistrate which the appellant has acknowledged to be flawless through his written submission and during the hearing. Suffice it to say, it would be prudent for the Fiji Corrections Service to look into this matter without further delay, so that the appellant is not unlawfully detained (if it is the case) any longer and also that the appellant will not have to seek redress by way of a judicial review.

8. All in all, I find this appeal to be misconceived and frivolous.
9. The appeal is accordingly dismissed.

  
Vinsent S. Perera  
JUDGE

**Solicitors:**

**Appellant in person**  
**Office of the Director of Public Prosecutions for the Respondent**

