

IN THE HIGH COURT OF FIJI
AT LABASA
[APPELLATE JURISDICTION]

CRIMINAL APPEAL CASE NO. HAA 17 OF 2020

(Magistrates' Court Case No. 506 of 2018)

BETWEEN: **WAISAKE TOROCAKE**

APPELLANT

AND: **THE STATE**

RESPONDENT

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

Date of Hearing: **22 July 2020**

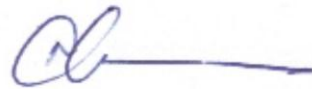
Date of Judgment: **24 July 2020**

JUDGMENT

1. On 25 October 2018, the appellant was charged with theft of 100 yaqona plants from a farmer in Savusavu. He was produced in the Magistrates' Court and released on bail. Thereafter the appellant absconded bail and was apprehended on 21 March 2020 on a warrant issued by the court.
2. On 8 June 2020, the appellant pleaded guilty to the charge. On 11 June 2020, the learned magistrate sentenced the appellant to 7 months and 26 days imprisonment after making a downward adjustment of 4 four days to reflect the appellant's remand period. All 100 yaqona plants recovered from the appellant were restored to the owner.
3. The appellant has filed a timely appeal against his sentence. His only complaint is that the learned magistrate has miscalculated the actual length of his remand period. The

actual length of his remand period from the date of his arrest to the date of his sentence (21/3/20-11/6/20) is 2 months and 15 days. The learned magistrate calculated the length of the appellant's remand period from the date he was produced in court following his arrest to the date he was sentenced (8/6/20-11/6/20). The miscalculation occurred because the learned magistrate was not advised that the appellant was apprehended on the bench warrant on 21 March 2020 but he could not be produced in court until 8 June 2020 due to Covid-19 lockdown requirements.

4. Section 24 of the Sentencing and Penalties Act states that any time spent in custody on remand, unless the court orders otherwise, is to be taken as imprisonment already served by an offender. It is clear that the learned magistrate had intended to reduce the appellant's sentence for the time he had already spent in custody on remand. The only mistake is the miscalculation of the actual remand period. There is an error in the exercise of the sentencing discretion.
5. The appeal is allowed. The sentence imposed in the magistrates' court is set aside and substituted with a sentence of 4 months, 15 days imprisonment effective from 11 June 2020.



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Hon. Mr Justice Daniel Goundar

Solicitors:

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

