

**IN THE HIGH COURT OF FIJI**  
**AT SUVA**  
**APPELLATE JURISDICTION**  
**CRIMINAL APPEAL CASE NO. HAA 039 OF 2020S**

**BETWEEN** : FILIPE DELANA

**APPELLANT**

**AND** : THE STATE

**RESPONDENT**

**Counsels** : Appellant in Person  
Mr. R. Kumar for State

**Hearing** : 27 April, 2022.

**Judgment** : 30 March, 2023.

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**JUDGMENT**

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1. On 26 June 2019, in the Suva Magistrate Court, the following charge was read over and explained to the appellant:

***“Count 1***

***Statement of Offence***

***DAMAGING PROPERTY: Contrary to Section 369 (1) of the Crimes Act Number 44 of 2009.***

***Particulars of Offence***

***FILIPE DELANA, ULAIASI QALOMAI, MESULAME WAQABACA, JOSIA USAMAKI, BAINIVALU TUIMATAVESI, SOLOMONI QURAI and PENIASI QALIBAU, on the 24<sup>th</sup> day of December, 2018 at Lami in the Central***

*Division, wilfully and unlawfully damaged 1 x Mattress Cover valued at \$39.00, 1 x Blanket valued at \$13.00, 1 x Pillow Case valued at \$12.00, 1 x Mosquito Net valued at \$25.00, 1 x 80 mm PVC Pipe valued at \$17.50 and 1 x 20 mm Deformed Bars valued at \$31.55 all to the total value of \$138.05 the property of FIJI CORRECTION SERVICES.*

**Count 2**

**Statement of Offence**

**Escaping from lawful custody: Contrary to Section 196 of the Crimes Act Number 44 of 2009.**

**Particulars of Offence**

***FILIFE DELANA, ULAIASI QALOMAI, MESULAME WAQABACA, JOSIAA USAMAKI, BAINIVALU TUIMATAVESI, SOLOMONI QURAI and PENIASI QALIBAU, on the 24<sup>th</sup> day of December, 2018 at Lami in the Central Division being a serving prisoner at NABORO MAXIMUM PRISON escaped from the said NABORO MAXIMUM PRISON.***

2. He had previously waived his right to counsel. He said, he understood the charges and pleaded not guilty to count no. 1, but pleaded guilty to count no. 2. Somehow, later in the proceeding, the prosecution withdrew count no. 1, with the court's consent. So, only count no. 2 remained to be dealt with by the court.
3. The summary of facts were recorded as follows by the court:

***"Summary of Facts***

***...The facts are that on the 24<sup>th</sup> of December 2018 at Lami in the Central Division, you Filife Delana, being a serving prisoner at Naboro Maximum Prison, did escape from the said Naboro Maximum Prison. At around 2.11 am on the 24<sup>th</sup> of December 2018, Corrections officer Mosese Nakavulevu was on duty at the Naboro Maximum Correction Facility and he heard a loud noise coming from the rooftop towards B2 wing Dormitory cell. He informed the other officers on duty that night to check at the laundry and bakery room. As they ran through the corridor through to the laundry room, they saw you and three others on the roof dressed only in your***

*underwear. The officers could not reach you as the laundry was locked and they saw the four of you climb over the wall and jump over the razor wire. The alarm was sounded for the escape and a joint operation was mounted with the Fiji Police Force and roadblocks were erected at various location.*

*You were recaptured later that day at 2.49 pm. You were then interviewed under caution and charged for the offence and later produced in Court in police custody...”*

4. The appellant admitted the above summary of facts, was found guilty as charged and convicted accordingly on 17 September 2019. The court sentenced him to 9 months imprisonment on count no. 2, and ordered the same to be consecutive to any prison sentence being currently served, on 17 September 2019. It appeared the appellant was not happy about the sentence, but his actual ground of complaint was not clear. It appeared he was saying the sentence was harsh and excessive.
  
5. I have carefully read the learned Magistrate’s sentence remark. In my view, he followed the right procedure and the laws. In my view, he did not err. In any event, at the time of the hearing of the appeal on 27 April 2022, the appellant said that he agreed with the 9 months prison sentence the learned Magistrate gave him on 17 September 2019. On that basis, the appellant’s appeal on conviction or sentence are dismissed. He had no proper grounds.



A handwritten signature in blue ink, appearing to be "Salesi Temo".

**Salesi Temo**  
**Acting Chief Justice**

**Solicitor for Appellant : In Person.**  
**Solicitor for Respondent : Office of the Director of Public Prosecution, Suva**