

Between:

LIVAI KOROI

Appellant

and

REGINAM

Respondent

Appellant in Person
Mr. R. Lindsay for the Respondent

JUDGMENT

On 7th December 1979 appellant was convicted after trial with several co-accused on two counts, namely:-

First Count: Escaping from lawful custody and was sentenced to two years' imprisonment.

Second Count: Assaulting a police officer in the execution of duty and was sentenced to two years' imprisonment to be served consecutively giving rise to a total effective sentence of four years' imprisonment.

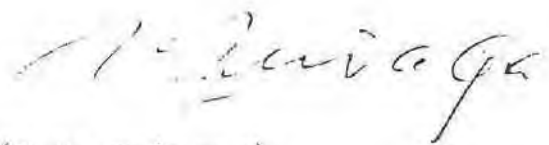
This appeal which is by leave of the trial Court allowing the appeal to be made out of time is on the ground of severity of sentence. Leave to appeal out of time was granted on 7th October, 1980 which is ten months after appellant's conviction on the above charges had been entered. This is well in excess of the period prescribed for lodging an appeal, namely twenty eight days and normally such leave should never have been granted. However in granting leave to appeal to this appellant after such a long lapse of time the learned Magistrate concerned must have had very serious doubts about the sentences he awarded appellant in this case. I have carefully considered the nature and circumstances of the offences of which appellant was convicted and I am inclined to agree that the sentences

of four years' imprisonment by the learned Magistrate was manifestly harsh and excessive.

I have indicated elsewhere (see Isireli Rokovucago v. R. Suva Criminal Appeal No. 22 of 1980) that in most cases of escaping from lawful custody an appropriate sentence for such an offence should be in the range between six and twelve months' imprisonment. Such an approach is desirable as it tends to ensure uniformity in sentencing practice between the various Courts in Fiji. Any sentence falling outside this range must be regarded as exceptional and may only be justified by its own particular circumstances.

In the present case what has inflated appellant's sentence was the fact that the sentences had been ordered to run consecutively without sufficient regard to its aggregate effect. The result inevitably was that sentences imposed in this case was much in excess of what the nature and circumstances of appellant's offences required.

Accordingly this appeal against sentence would be allowed. The sentences imposed on appellant in the Court below are set aside and in lieu thereof appellant is sentenced to nine months' imprisonment in the first count and fifteen months' imprisonment in the second count to be served consecutively.


(T. U. Tuivaga)
Chief Justice

Suva,
13th February 1981.