

IN THE SUPREME COURT OF FIJI
[CRIMINAL APPELLATE JURISDICTION]

CRIMINAL PETITION NO. CAV0010 OF 2024

[Court of Appeal No: AAU 0112 2019]

BETWEEN : **BILL JACKSON**

Petitioner

AND : **THE STATE**

Respondent

Coram : The Hon. Mr Justice Anthony Gates, Judge of the Supreme Court
The Hon. Mr Justice Brian Keith, Judge of the Supreme Court
The Hon. Mr Justice Terence Arnold, Judge of the Supreme Court

Counsel: Mr M Fesaitu and Ms Vulimainadave for the Petitioner
Ms B Kantharia and Ms S Shameem for the Respondent

Date of Hearing: 16th October, 2024

Date of Judgment: 30th October, 2024

JUDGMENT

Gates, J

[1] I have read the judgment of Arnold J. I am in full agreement that this is a proper case in which to grant an enlargement of time within which to appeal. I also agree with the necessity to make orders clarifying the commencement date of the substituted sentence, namely 26 June 2019.

Keith, J

[2] I agree with the judgment of Arnold J.

Arnold, J

Introduction

[3] Following a High Court trial, the Petitioner, Bill Jackson, was convicted on a representative charge of rape and a representative charge of sexual assault arising from events that occurred in July 2016. On 26 June 2019, he was sentenced to a term of imprisonment of 12 years, five months, with a non-parole period of 10 years.

[4] The petitioner appealed against his convictions and sentence. He was unsuccessful on his conviction appeal but succeeded in relation to sentence.¹ The Court of Appeal considered that there was a risk of double-counting and that his sentence was “harsh and excessive”. The Court reduced the petitioner’s sentence to 11 years, five months imprisonment, with a non-parole period of nine years.²

[5] The Court of Appeal made the following three orders on the sentence appeal:

2. Sentence appeal is allowed.
3. Aggregate imprisonment term of 12 years 05 months, with a non-parole period of 10 years is set aside with effect from 28 February 2024.
4. Substitute aggregate imprisonment term of 11 years 05 months with a parole period of 9 years is ordered with effect from 28 February 2024.

28 February 2024 was the date of delivery of the Court’s judgment.

A problem emerges

[6] The petitioner has deposed that the prison authorities have advised him that his anticipated release date is now “sometime in 2033”. This date appears to have been calculated on the basis that the words “with effect from 28 February 2024” mean that

¹ *Jackson v State* [2024] FJCA 36.
² See paras [41]-[45].

the substitute sentence begins to run from that date – “sometime in 2033” is nine years from February 2024 (ie, the expiration of the substitute non-parole period).

- [7] The effect of this interpretation of the Court of Appeal’s orders is that the petitioner will serve a considerably longer sentence than he was originally sentenced to serve. This is because at the date of delivery of the Court of Appeal’s judgment, he had served a little over four and a half years of his sentence. If, as the prison authorities apparently consider, the substitute non-parole period of nine years begins running from 28 February 2024, he will serve at least 13 and a half years imprisonment, which is longer than the sentence quashed by the Court of Appeal as being “harsh and excessive”. Moreover, the petitioner’s effective head sentence would be around 16 years (four and a half years already served plus 11 years, five months by way of substitute sentence).
- [8] In light of this advice, the petitioner has applied for leave to appeal against his sentence. As his petition is out of time, he seeks an extension of time to file his petition.

Discussion

- [9] As is clear from the body of the Court of Appeal’s judgment, the interpretation of the Court of Appeal’s orders that the prison authorities appear to have adopted is contrary to what the Court of Appeal intended. What the Court of Appeal stated it was doing was *reducing* the petitioner’s head sentence and non-parole period, not increasing them. There is nothing in the judgment to indicate that the Court of Appeal intended to deprive the petitioner of the benefit of the time he had already served. The words “with effect from 28 February 2024” in orders 3 and 4 simply reflected the date of delivery of the judgment.
- [10] The true effect of the Court of Appeal’s judgment is as follows. The sentence imposed by the trial Judge was quashed and another sentence substituted for it. The substitute sentence became the sentence that the petitioner must serve. The Court of Appeal fixed the petitioner’s head sentence at 11 years and five months, and his non-parole period at nine years. Because he has been incarcerated since June 2019, his nine year non-parole period will expire in June 2028 and his head sentence in 2031, ie *earlier* than would have been the case under his original sentence.

[11] The Court of Appeal’s inclusion of the words “with effect from 28 February 2024” in orders 3 and 4 was unnecessary and has obviously caused some confusion. Where prison personnel are confused as to what the effect of an order of the Court of Appeal is, it may be that the matter can be resolved through an enquiry to the Court’s Registry.

[12] Counsel for the State, Ms Kantharia, responsibly conceded that the interpretation I have set out above is the correct interpretation of the Court of Appeal’s orders and that, without this Court’s intervention, the petitioner would suffer a grave injustice.

[13] To rectify the position, I would grant the petitioner an extension of time to seek leave to appeal against sentence; I would grant leave, on the basis that the criterion is section 7(2)(c) of the Supreme Court Act 1998 is met (“substantial and grave injustice may otherwise occur”); and I would remove from orders 3 and 4 the words that have been the source of confusion.

[14] Accordingly, I would quash orders 3 and 4 made by the Court of Appeal and substitute the following orders:

3. Aggregate imprisonment term of 12 years 05 months, with a non-parole period of 10 years, is set aside.
4. Substitute aggregate imprisonment term of 11 years 05 months, with a parole period of 9 years, is ordered.

I would also make it clear that the commencement date of the substitute sentence is 26 June 2019.

Orders:

1. *An extension of time to seek leave to appeal against sentence is granted.*
2. *Leave to appeal against sentence is granted.*
3. *Orders 3 and 4 made by the Court of Appeal are quashed and replaced by the following orders:*
 - i. *Aggregate imprisonment term of 12 years 05 months, with a non-parole period of 10 years, is set aside.*

- ii. *Substitute aggregate imprisonment term of 11 years 05 months, with a non-parole period of 9 years, is ordered.*
- iii. *The sentence having been varied, the commencement date of the sentence remains the same, namely 26 June 2019.*



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The Hon Mr Justice Anthony Gates
JUDGE OF THE SUPREME COURT

A handwritten signature in blue ink, appearing to read "Brian Keith", written over a horizontal line.

The Hon Mr Justice Brian Keith
JUDGE OF THE SUPREME COURT

A handwritten signature in blue ink, appearing to read "Terence Arnold", written over a horizontal line.

The Hon Mr Justice Terence Arnold
JUDGE OF THE SUPREME COURT