IN THE COURT OF APPEAL, FIJI ISLANDS
ON APPEAL FROM THE HIGH COURT OF FIJI

CRIMINAL APPEAL NO. AAU0020 OF 2002S
(High Court Criminal Action No. HAA0031 of 2002)

BETWEEN:

MANASA WAQA

Appellant

AND:

THE STATE

Respondent

Coram: Penlington, JA
Scott, JA
Wood, JA

Hearing: Monday, 8th November 2004, Suva

Counsel: Appellant in Person
Ms A. Prasad for the Respondent

Date of Judgment: Thursday, 11th November 2004

JUDGMENT OF THE COURT

This is an application by the Appellant for leave to appeal to the Supreme Court brought pursuant to the provisions of Section 122(2)(a) of the Constitution and Part IV of the Court of Appeal Rules.

On 25 April 2004 the Appellant pleaded guilty in the Magistrates' Court to one offence of housebreaking and larceny. The offence was committed after the Appellant

escaped from prison. He was sentenced to two years imprisonment consecutive to the seven years which he was already serving.

On 21 June 2002 the High Court at Suva dismissed his application for leave to appeal against sentence out of time.

On 16 July 2004 this Court dismissed an appeal from the High Court. It held that the Appellant had no reasonably arguable grounds of appeal. In particular it took the view that the total sentence of nine years was within the available range and could not be challenged.

The Appellant's present grounds of appeal are contained in a letter dated 22 July 2004. He again involved the totality principle and also suggested that he had been more harshly treated than others convicted of similar or more serious offences. He was however unable precisely to identify the question for certification by this Court as required by Rule 65(3)(a).

A second appeal to this Court only lies when the sentence imposed was unlawful or passed in consequence of an error of law (Court of Appeal Act – Cap 12 – Section 22(1A)(a)). Neither of these grounds was made out by the Appellant. As already pointed out the total sentence imposed was within the available range. A sentence imposed on a re-offending absconder should, in principle, he made consecutive to the sentence already being served (***Hennessy*** (1970) 51 Cr. App R.148; ***Krishna v. Reginam*** (1962) 8 FLR 236). While disparities in sentencing are obviously to be avoided so far as possible, the

appropriateness of the sentence imposed is the paramount consideration, not parity (***Meli Vakamocea v. The State*** FCA B.V.88/1). In our opinion no question of significant public importance has been raised.

Leave to appeal to the Supreme Court is refused.

Penlington, JA

Scott, JA

FIJI COURT OF APPEAL

Wood, JA

Solicitors:

Appellant in Person
Office of the Director of Public Prosecutions, Suva for the Respondent

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