

IN THE COURT OF APPEAL, FIJI ISLANDS  
CRIMINAL APPEAL NO. AAU 0020/2004S

Between:

MOSESE VAKADRAKALA

Applicant

and

THE STATE

Respondent

Applicant in person  
Ms. A. Prasad for the Respondent

DECISION

On 29 January 2003 the Applicant (together with 53 others) was convicted on his own plea by a General Court Martial of the offence of mutiny contrary to the Army Act 1955 (UK). He was sentenced to 8 years imprisonment. The sentence, as required by Section 23 (2) (a) of the Republic of Fiji Military Forces Act (Cap 81-the RFMF Act) was confirmed by H.E. The President on 25 April 2003.

The Applicant now seeks leave to appeal out of time against the sentence imposed. His principal contention is that his lawyer failed, despite instructions, to present his appeal within time. He now represents himself.

The first question which was raised by Ms. Prasad is whether a person who has been convicted and sentenced by a Court Martial has any right of appeal against sentence at all.

Part VI of the RFMF Act deals with appeals from Courts Martial. No right of appeal against sentence appears in the Part and with the exception of Section 23 (2) (a) already referred to there is no mention in the RFMF Act of appeals against or reviews of sentences imposed.

In Valuone Rogoyawa v. The State (AAU 0010/97S) the Court of Appeal accepted that the RFMF Act does not confer a right of appeal against sentence as opposed to conviction. The question of whether such a right is conferred through any other provision was not however considered. There is no mention of appeals from Courts Martial in the Court of Appeal Act.

It seems wrong that a person upon whom a very substantial sentence of imprisonment has been imposed should have no right to have the propriety of that sentence reviewed. Under Section 28 (1) (1) of the 1997 Constitution a person has the right:

"if found guilty to appeal to a higher court."

Under Section 25 (1) of the Constitution a person has the right:

"... to freedom from ... disproportionately severe treatment or punishment."

The basis of the Applicant's substantive appeal would be that he and his fellow mutineers were much more severely dealt with than others dealt with by an earlier Court Martial.

Under Section 23(1) of the RFMF Act the U.K. Army Act as modified applies to Courts Martial held under the provisions of the RFMF Act.

Under Section 108 of the Army Act a convicted person may present a petition of appeal against the sentence imposed upon him.

Under Sections 109 and 110 a sentence may be reviewed, varied or confirmed. Section 113 provides that a confirmed sentence may be reviewed by petition being presented to a "reviewing authority".


The "reviewing authorities" are:

- (a) Her Majesty the Queen, or
- (b) The Defence Council; or
- (c) Any officer superior in command to the confirming officer.

Since Fiji is a republic (a) is obviously inapplicable. There is no Defence Council in Fiji as far as I am aware. Since this sentence was confirmed by the Commander-in-Chief of the RFMF (c) is also inapplicable. It seems that no right of appeal against sentence can be brought into the RFMF Act by means of the Army Act.

I accept the State's submission that as the law stands in Fiji the Applicant has no right of appeal against the sentence imposed upon him. The question of granting leave to appeal out of time does not therefore arise.

It seems that there is a most unfortunate lacuna in the law. While dismissing this application under the provisions of Section 35 (2) of the Court of Appeal Act I request the Chief Registrar to send a copy of this Decision to the Solicitor General and to the Human Rights Commission.

  
 M.D. Scott  
 Justice of Appeal

18 June 2004