

**IN THE COURT OF APPEAL
AT SUVA**

APPELLATE JURISDICTION

CRIMINAL APPEAL NO. AAU0052 OF 2011

BETWEEN : **DWAYNE HICKS**
APPLICANT

AND : **THE STATE**
RESPONDENT

COUNSEL : **Applicant in Person**
Mr. M. Korovou for Respondent

Date of Hearing : **8 July 2013**

Date of Ruling : **25 July 2013**

RULING

[1] This appeal is from a judgment of the High Court at Lautoka in its appellate jurisdiction. The right of appeal is governed by section 22 of the Court of Appeal Act. Section 22 states:

22. - (1) Any party to an appeal from a magistrate's court to the High Court may appeal, under this Part, against the decision of the High Court in such appellate jurisdiction to the Court of Appeal on any ground of appeal which involves a question of law only.

[2] The appellant's main contention is that he was convicted and sentenced on defective charges.

[3] The appellant was convicted and sentenced on the following charges:

Statement of Offence (a)

ESCAPING FROM LAWFUL CUSTODY: Contrary to Section 196 of Criminal Procedure Decree 2009.

Particulars of Offence (b)

Taito Seninawanawa, Paula Namua, Sitiveni Uluinavucu and **Dwayne Hicks** on the 18th day of July, 2010 at Lautoka in the Western Division being in the lawful custody of Prison Officer Sgt 905 Timoci Wainiqolo, escaped from such lawful custody.

Statement of Offence (a)

SERIOUS ASSAULT: Contrary to Section 277(b) of Criminal Procedure Decree No.44 of 2009.

Particulars of Offence (b)

Dwayne Hicks, on the 24th day of July, 2010 at Lautoka in the Western Division resisted Police Constable 3074 Inoke Colati whilst effecting arrest in due execution of his duty.

[4] The objection to the charges stems out from the reference to the Criminal Procedure Decree (instead of the Crimes Decree) in the

statement of offence and the particulars provided for serious assault. Counsel for the State concedes that the charges are defective.

[5] Unfortunately, the issue of defective charges was not raised as a ground of appeal in the High Court. It is an issue that is being raised for the first time in this Court. It appears from the written submissions of the appellant and the State Counsel in the High Court that they were under the apprehension that the charges were laid under the Crimes Decree. It could be argued that the defect did not prejudice the appellant, but that is not a conclusion that I am entitled to reach at this stage of the appeal. Whether a charge is defective is a question of law alone (*Skipper v Reginam* [1979] FJCA 6; Criminal Appeal No. 70 of 1978 (29 March 1979)).

[6] For these reasons, the appeal may proceed before the Full Court on the ground of defective charges.

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DANIEL GOUNDAR

JUDGE

Solicitors:

Applicant in Person
Office of the Director of Public Prosecutions for Respondent.