IN THE HIGH COURT OF FIJI AT SUVA APPELLATE JURISDICTION

CRIMINAL APPEAL CASE NO. HAA 27 OF 2022

BETWEEN:

MESULAME WAQABACA

APPELLANT

A N D:

THE STATE

RESPONDENT

Counsel:

Appellant In Person

Ms. B. Kantharia for Respondent

Date of Hearing:

19th April 2023

Date of Judgment:

29th June 2023

JUDGMENT

1. The Appellant was charged with several others in the Suva Magistrate's Court with one count of Damaging Property contrary to Section 369 (1) of the Crimes Act and one count of Escaping from Lawful Custody, contrary to Section 196 of the Crimes Act. However, the Prosecution subsequently withdrew the charge of Damaging Property. The Appellant initially pleaded not guilty to this offence but eventually changed his mind and pleaded guilty to this offence. On the 17th of August 2022, the learned Magistrate sentenced him to eight months imprisonment and to be served consecutive to the current imprisonment terms the Appellant is serving in respect of HAC 054/2009. Aggrieved with the said conviction and sentence, the Appellant filed this appeal on the following grounds:

Sentence Grounds of Appeal

a) That the learned sentencing Magistrate made a pure err or law when she went on to sentence the Appellant. She was fully aware that the Appellant will be doubly jeopardize in doing so, caused the sentence to be harsh and excessive and also had caused a grave miscarriage of justice [as was held in the Criminal Appeal in Taito Rarasea v The State Criminal Appeal No. HAA0027 of 2000]

Conviction Grounds of Appeal

a) That the learned sentencing Magistrate err in law when she sentence the Appellant was fully-aware that the guilty plea entered by the Appellant was of an equivocal one therefore, caused the conviction to be unsafe and unsatisfactory.

Appeal against the Conviction

2. For convenience, I first draw my attention to the appeal against the conviction, where the Appellant argues that his guilty plea is equivocal. Having carefully perused the record of the proceedings in the Magistrate's Court, it is apparent that the Appellant was given all of his procedural and constitutional rights while taking his plea. Mr. Buakula represented the Appellant on the 17th of January 2022, when he pleaded guilty of his own free will before former Chief Magistrate Mr. Usaia Ratuvili (as His Lordship then was). Having satisfied that the Appellant had pleaded guilty of his own free will and admitted the summary of facts, the learned former Chief Magistrate had then convicted him of the same pursuant to Section 174 (2) of the Criminal Procedure Act. Subsequent to several adjournments, the learned Acting Chief Magistrate, Ms. George, sentenced the Appellant on the 17th of August 2022. Accordingly, I do not find any error in recording the Appellant's guilty plea and convicting him afterwards. Hence, I find no merits in this ground of appeal.

Appeal against the Sentence

- The Appellant argues that the learned Magistrate erred in law by imposing a consecutive sentence instead of a concurrent term.
- 4. Section 22 (4) of the Sentencing and Penalties Act states that:

"Every term of imprisonment imposed on a prisoner by a court in respect of a prison offence or an escape offence must, unless otherwise directed by the court based on exceptional circumstances, be served consecutively on any uncompleted sentence of imprisonment.

- Accordingly, the learned Magistrate had accurately ordered that the term of imprisonment of eight months be served consecutive to his remaining term of imprisonment in HAC 054/2009. Hence, I do not find any merit in this ground of Appeal.
- 6. In conclusion, I make the following order:
 - The Appeal is refused and dismissed.
- 7. Thirty (30) days to appeal to the Fiji Court of Appeal.



Hon. Mr. Justice R. D. R. T. Rajasinghe

At Suva

29th June 2023

Solicitors.

Appellant In Person.

Office of the Director of Public Prosecutions for the Respondent.