

IN THE HIGH COURT OF FIJI
AT SUVA
MISCELLANEOUS JURISDICTION

CRIM. MISC. CASE NO: HAM 020/2009

BETWEEN:

JEKE VAKARARAWA

Applicant

AND:

THE STATE

Respondent

Date of Hearing: 10th July 2009

Date of Ruling: 24th July 2009

Counsel: Applicant in person
Mr. J. Singh for State

RULING

[1] On 22 August 2008, the applicant was convicted on his pleas of guilty to four charges of robbery with violence. He was sentenced to two years imprisonment

on each charge, to be served concurrently with his pre-existing sentence of six years imprisonment.

- [2] On 25 March 2009, this application was filed to appeal against the sentence. The appeal is out of time by six months.
- [3] The applicant's main complaint is that the Department of Prison has made his sentence of two years imprisonment consecutive to his six years sentence when in fact it should be concurrent.
- [4] The applicant is not alleging any error in his sentence that was imposed by the Magistrates' Court. The applicant's complaint concerns an administrative error by the Department of Prison in recording the total sentence the applicant has to serve.
- [5] Since the applicant is unrepresented, I directed the court clerk to enquire from the prison and obtain from their record the total length of sentence the applicant has to serve. The Department of Prison advised the clerk in writing that the applicant has to serve eight years. The Department has provided all the committal warrants of the applicant with the letter.
- [6] The committal warrants specify that the applicant serve all his sentences concurrently. Thus, the total sentence that the applicant has to serve is six years imprisonment and not eight years imprisonment as suggested by the Department of Prison. It appears that the Department of Prison is mistaken in

concluding that the total length of sentence the applicant has to serve is eight years imprisonment. The total sentence that the applicant has to serve according to the committal warrants is six years imprisonment.

[7] However, this Court will only grant leave to appeal out of time if there are merits in appeal against the decision of the Magistrates' Court. The error alleged by the applicant is not in the sentence passed by the Magistrates' Court but is in the record of the Department of Prison. The error is an administrative mistake which is not within the appellate jurisdiction of this Court.

[8] Leave to appeal out of time is refused but the Department of Prison is advised to correct its record in respect to the total sentence the applicant is to serve that is consistent with this ruling.

Daniel Goundar
JUDGE

At Suva
24th July 2009

Solicitors:

Applicant in person
Office of the DPP for State