

IN THE COURT OF APPEAL
[On Appeal From The High Court]

CRIMINAL APPEAL NO: AAU0031 of 2013
(High Court Case No. HAA 27 of 2012)

BETWEEN : JONE MASIREWA

Appellant

AND : THE STATE

Respondent

Coram : Goundar JA

**Counsel : Appellant in Person
Mr. L. Fotofili for the Respondent**

Date of Hearing : 6 May 2014

Date of Ruling : 2 June 2014

RULING

- [1] After an unsuccessful appeal in the High Court at Labasa, the appellant filed an appeal against sentence in this Court. The High Court judgment was delivered on 29 November 2012. The Notice of Appeal is dated 29 February 2013, but by the time the Notice was filed in the Criminal Registry by the Corrections Department, the appeal was out of time by three months.
- [2] I bear in mind that the appellant had to forward his Notice of Appeal to the Court of Appeal Registry in Suva from the Labasa Corrections Centre. Since the State has not taken an issue regarding the delay, I grant the appellant an extension of time to appeal.
- [3] The hurdle for the appellant is that his appeal is restricted by section 22 of the Court of Appeal Act. Section 22 provides:

“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 which appellate jurisdiction to the Court of Appeal on any ground of appeal which involves a question of law only

Provided that no appeal shall lie against the confirmation by the [High Court] of a verdict of acquittal by a magistrate’s court.

[(1A) No appeal under subsection (1) lies in respect of a sentence imposed by the High Court in its appellate jurisdiction unless the appeal is on the ground

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(a) The sentence was an unlawful one or was passed in consequence of an error of law; or

(b) That the High Court imposed an immediate custodial sentence in substitution for a non-custodial sentence].”

[4] The appellant was sentenced to three years’ imprisonment with a non-parole period of 2½ years, after he pleaded guilty to one count of grievous harm in the Magistrates’ Court. The victim was the appellant’s de-facto partner. The charge arose from a domestic dispute. The appellant slapped and pushed the victim. When she fell down he punched her several times in her face and hit her head several times with a piece of timber. The victim sustained a wound on her skull and several bruises in her face, arm and back.

[5] The learned High Court judge dismissed the appellant’s appeal against sentence by giving the following reasons at paragraphs [11] – [12]:

“Attacks to the head should attract a minimum term of two years imprisonment and prolonged intensive attacks will attract sentences in the upper range of two to six years. It is only in extremely rare circumstances that sentences for domestic violence assaults will be suspended.

The learned Magistrate in this case approached the sentence quite properly. He gave credit for the plea of guilty and for the remorse and he gave proper weight to the aggravating features. If anything, he erred on the side of leniency.”

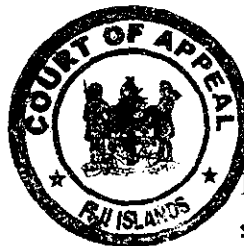
[6] The appellant’s grounds of appeal are not properly articulated. They do not allege any error in the sentence but plead leniency from this Court because of the circumstances and nature


of offence. The victim has provided a letter to this Court in which she pleads for clemency on behalf of the appellant.

- [7] The maximum sentence prescribed for grievous harm is 15 years imprisonment. The tariff for grievous harm is two to six years imprisonment.
- [8] The sentence of 3 years' imprisonment imposed on the appellant is clearly lawful and was not passed in consequence of an error of law.
- [9] Section 35(2) gives a single judge power to dismiss an appeal if satisfied the appeal is bound to fail because there is no right of appeal.
- [10] In this case, I am satisfied that the appellant's appeal is bound to fail because his sentence is lawful and was not passed in consequence of an error of law.

Result

- [11] The appeal is dismissed under section 35(2) of the Court of Appeal Act because there is no right of appeal.




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Hon. Justice D. Goundar
JUSTICE OF APPEAL