IN THE HIGH COURT OF FIJI AT SUVA
CRIMINAL REVIEW JURISDICTION

Criminal Review No. HAR 001 of 2002

Between: **Josefa Seru**

APPLICANT

And: **THE STATE**

WRITTEN SUBMISSIONS

The applicant is making this application for review pursuant to section 323 of the Criminal Procedure Code. The application is in relation to the cumulative traffic fines that he has incurred and which amount to $641: 50 (six hundred and forty one dollars fifty cents), in default of which he is liable to 435 days in prison.

A Brief Chronology

25th October 2000 Josefa Seru is convicted on three separate offences, for larceny in a dwelling house and burglary (62/00), Shop breaking entering and larceny and damaging property (98/00), Unlawful use of a motor vehicle (747/99). He was sentenced to 3 years and 3 months imprisonment in total. He was originally admitted to Natabua Prison.

6th June 2001 Transferred to the Nasinu Reformative Training Prison to finish his sentence.

The applicant alleges that it is while he was admitted at Natabua Prison that twelve separate outstanding warrants of commitment were all enforced on him and that 435 days were added on

to his term of imprisonment. Upon a perusal of his file, it appears that if these fines were not added on to his term, his earliest date of release with remission would be 6th June 2002. However with these fines it now appears that he would be liable for release by 2003. The applicant is therefore requesting the Court to be released on 6th of June 2002 so that he can work and payoff his outstanding fines. It is contended that 435 days imprisonment is excessive and unjustified punishment for traffic fines and he is willing to work to payoff his fines.

His 12 traffic fines are for a period from July 1999 to February 2000 and the traffic offences range from incorrect stopping, using private vehicle as a taxi and driving a motor vehicle emitting smoke to cause a nuisance. The respective fines range from $80 to $30.

The Law

The current position in law is that pronounced by Justice Michael Scott in **Miscellaneous Proceedings No. HBM 15 of 2000** **In the matter of Eroni Delai,** specifically at page 4 of his judgement where he stated as follows: -

> *"It is abundantly plain and obvious that a man who parks his van illegally or uses his private vehicle as a taxi should not be required to serve a twelve year term of imprisonment...For the avoidance of this sort of problem in the future it is essential that the accumulation of unpaid fines and the consequent accumulation of unserved default periods of imprisonment be avoided."*

The Applicant relies on the authority of **Eroni Delai** and the cases that have relied on this authority to substantiate his appeal for the Court's intervention in his favour. It is submitted that to incarcerate a person for 435 days because of non-payment of traffic fines constitutes disproportionately severe treatment or punishment in contravention of section 25(1) of the Constitution. This is, in our respectful view aggravated by the fact that these outstanding

warrants were imposed on the Applicant while serving in prison without any means to pay the outstanding arrears.

The Appellant fully acknowledges that the traffic fines are not the sole reason that he is imprisoned, however it is his contention that these traffic fines have and are continuing to prolong his incarceration and that it would be better for him to be released on the 6th of June 2002 so that he can payoff the fines. He undertakes that the balance of his outstanding fine will be paid off in a timely fashion.

Conclusion

In conclusion, the Applicant submits that his prolonged incarceration by 435 days is in breach of his constitutional rights under section 25(1) and prays that this Honourable Court exercise its revisional jurisdiction in his favour so that he is released on the earliest date of release on his criminal convictions to allow him to obtain gainful employment and pay his outstanding traffic fines.

As the authority of Eroni Delai states, the Applicant's continued incarceration after the 6th of June is unjustified and we therefore request the Court's intervention in this matter.

Dated this day of May 2002

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U.Ratuvili (Counsel),

for **The Proceedings Commissioner**

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