

IN THE HIGH COURT OF FIJI
AT SUVA
CRIMINAL REVISIONAL JURISDICTION

REVISION NO: HAR003 OF 2001S

Between : **KARALO NAITUKU** **Applicant**
And : **THE STATE** **Respondent**

Counsel: Mr U Ratuveli for the Proceedings Commissioner
Ms A. Prasad for Respondent

Hearing: 22nd March 2002
Judgment: 28th March 2002

JUDGMENT

The Human Rights Commission, on behalf of Karalo Naituku has referred this matter to the High Court for review of sentence.

The scenario from which this case arises has become all too familiar. Karalo Naituku is a mini-bus driver who, in his absence was convicted and fined in respect of a number of traffic offences. He never paid any of his fines, and by 2001, his accumulated fines totaled \$1323, with a total term of 950 days imprisonment to be served in default of payment of fines.

No action was taken in respect of the unpaid fines (some of which were ordered in 1995) until the 27th of February 2001 when he was committed to prison to serve the 950 days.

He appealed against his sentence in October 2001, but the records from the Magistrates Courts were not sent to the High Court until February 2002 despite several reminders sent by the Officer-in-Charge of the Criminal Court Registry.

Because of the delay in the setting of the appeal, I decided to proceed in the revisionary jurisdiction of the Court, which in any event, appears to be more appropriate in a case such as this, where the question relates to "the correctness, legality or propriety of any finding, sentence or order recorded or passed and as to the regularity of any proceedings, in any magistrates' court."

It is clear that the total term of imprisonment being served, that is, of 2 years and 7 months is totally disproportionate to the nature of the offending. On that ground alone, the sentence is set aside.

However, I must make several observations, none of which are novel. Firstly, in **In the Matter of Eroni Delai** Miscellaneous Proceedings No. HBM15 of 2000, Scott J, in a similar case said:

“ For the avoidance of this sort of problem in future, it is essential that the accumulation of unpaid fines and the consequent accumulation of unserved default periods of imprisonment be avoided. The Magistrates’ Court must devise a procedure to ensure the execution of warrants reasonably soon after the period given for the payment of fine has expired.”

Both counsel informed me that no such procedure has been devised. Changes in the way committal warrants are executed are clearly long overdue.

My second observation is that the Applicant appears to have acted with a total disregard for the sentences ordered by the court. Although counsel submitted that he thought that the fines would be paid by his employer, it is the Applicant who was charged for the offences, and the Applicant who ought to have taken responsibility for checking on the progress of the fines.

My third observation is that, if the Magistrates’ Court does not take steps to deal with the problem of accumulated unpaid fines, then some legislative reform may need to be considered to allow for community service to be ordered instead of imprisonment under Section 37 of the Penal Code. This is perhaps a matter for the DPP’s office, the Law Reform Commission and the Human Rights Commission, to explore further.

In respect of this application, the sentence to be served in default of payment of fines is varied to allow for the Applicant’s release on 22nd March 2002.

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Nazhat Shameem
Judge

At Suva
28th March 2002

