

**IN THE HIGH COURT OF FIJI  
AT SUVA  
CIVIL JURISDICTION**

**CIVIL ACTION No. HBJ 25 of 2023**

**IN THE MATTER** of an application by  
**Joseph Christopher**, Convicted Serving  
Prisoner of Minimum Correction Center.

**IN THE MATTER** of an application  
pursuant to Order 53 Rule (1), (3) of the  
Fiji Correction Service (Amendment)  
Act 2019 and Section 14 (2), (n) and 26  
of the 2013 Constitution.

**Between:** Joseph Christopher

**Applicant**

**And:** The Attorney General's Office

**Respondent**

The Fiji Corrections Service

**Amicus Curiae**

The Human Rights Commission

**Amicus Curiae**

**Representation**

**Applicant:** In Person.

**Respondent:** Mr. V. Ram (Attorney General's Office)  
Mr. P. Sharma (Human Rights Commission)

**Dates of Hearing:** 12<sup>th</sup> February 2024 & 1<sup>st</sup> March 2024

**Ruling**

**Application for Leave to apply for Judicial Review**

- [1] The Applicant filed an application for leave to apply for judicial review against the decision of one-third remission from the non-parole period of his sentence. On 19<sup>th</sup> September 2018 the Applicant was sentenced to 9 years, 6 months and 20 days imprisonment (Head Sentence). The non-parole period was 7 years, 6 months and 20 days. The Applicant filed an affidavit. A notice of opposition and an affidavit of Solomon Turaga of Fiji Corrections Service was filed by the AG's Office. Written and oral submissions were made.
- [2] The submission for the Applicant is that he has not been given the benefit of a third remission which every prisoner is entitled to under Section 27 (2) of the Corrections

Service Act 2006. His argument is that he should benefit from a third remission from the Head Sentence. According to the AG's office the Applicant has failed to identify the particulars of the judgment, order or decision or other proceedings in respect of which judicial review is being sought. According to the AG's office the Applicant can seek clarification in relation to his release date from the Commissioner pursuant to Section 48 (2) of the Corrections Act.

[3] The test for Application for Leave for Judicial Review was stated by Justice Scutt in *Nair v Permanent Secretary for Education & Ors in Judicial Review No. 2 of 2008* as follows:

- *Does the applicant have sufficient interest in the application?*
- *Is the decision susceptible to judicial review – that is, is it of a private or public nature?*
- *Are alternative remedies available to the applicant and, if so, have they been pursued by the applicant?*
- *Does the material available disclose an arguable case favouring the grant of the relief sought, or what might, on further consideration, be an arguable case?*

[4] The fact that Applicant has sufficient interest is not in dispute. According to the AG's office the Applicant has alternative remedy. The Applicant has shown that he has written to Corrections letters dated 28th December 2019 and 4th July 2020, to visiting justice letters dated 19th February 2021 and to Human Rights Commission letter dated 26th November 2018 and exhausted all avenues. While the AG's office has stated that the Applicant has an alternative remedy to write to the Commissioner seeking clarification. I note that there is no decision of the Corrections that is susceptible to judicial review. Mr Turaga in his affidavit stated that the Applicant was informed of his latest release date.

[5] The next issue is whether Applicant has an arguable case. The test for arguable case was stated by Lord Diplock in *Inland Revenue Commission v National Federation of Self Employed and Small Businesses Ltd [1981] UKHL 2; [1982] AC 617* as follows:-

*“The whole purpose of requiring that leave should first be obtained to make the application for judicial review would be defeated if the court were to go into matter at any depth at that stage. If, on a quick perusal of the material then available, the court thinks that it discloses what might on further consideration, turn out to be an arguable case in favour of granting to the applicant the relief claimed, it ought, in the exercise of a judicial discretion, to give him, leave to apply for that relief. The discretion that the court is exercising at this stage is not the same as that which is it is called upon to exercise when all the evidence is in and the matter has been fully argued at the hearing of the application.”*

The leading Fijian authority on this issue is the Supreme Court in *Matalulu & Anor. v Director of Public Prosecutions [2003] 4 LRC 712* which stated as follows:-

*"The Judge granting leave to issue judicial review proceedings has discretion, once a sufficient interest is shown by the applicant. That discretion has to be informed by the evident purpose of Order 53. It is not an occasion for a trial of issues in the proposed proceedings. The judge is entitled to have regard to a variety of factors relevant to the purpose of the rule. These include:*

1. *Whether the proposed application is frivolous or vexatious or an abuse of the process of the Court.*
2. *Whether the application discloses arguable grounds for review based upon facts supported by affidavit.*
3. *Whether the application would serve any useful purpose, eg whether the question has become moot.*
4. *Whether there is an obvious alternative remedy, such as administrative review or appeal on the merits, which has not been exhausted by the applicant.*
5. *Whether a restrictive approach to the grant of leave is warranted because the decision is one which is amenable to only limited judicial review.*

*The question whether there are arguable grounds for review is not to be determined by the resolution of contestable issues of law. But where a proposed application for judicial review depends upon grounds involving assertions of law or fact which are manifestly untenable, then leave should not be granted."*

[6] The Applicant argues that Sections 27 (3), 27 (4) and 27 (5) of the Corrections Act 2006 infringe his rights under Section 14 (2) (n) of the 2013 Constitution. Section 27 of the Corrections Act 2006 was amended effective 22<sup>nd</sup> November 2019 as follows:

*"(3) Notwithstanding subsection (2), where the sentence of a prisoner includes a non-parole period fixed by a court in accordance with section 18 of the Sentencing and Penalties Act 2009, for the purposes of the initial classification, the date of release for the prisoner shall be determined on the basis of a remission of one-third of the sentence not taking into account the non-parole period.*

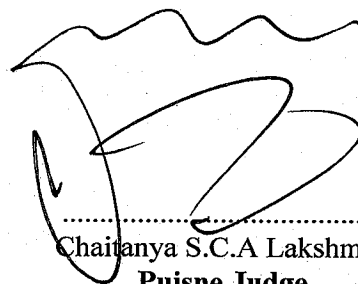
*(4) For the avoidance of doubt, where the sentence of a prisoner includes a non parole period fixed by a court in accordance with section 18 of the Sentencing and Penalties Act 2009, the prisoner must serve the full term of the non-parole period.*

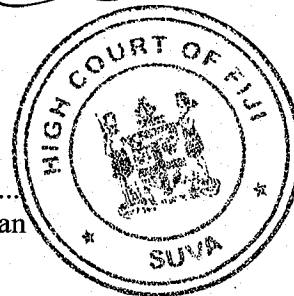
*(5) Subsections (3) and (4) apply to any sentence delivered before or after the commencement of the Corrections Service (Amendment) Act 2019."*

Section 14 (2) (n) of the Constitution provides that *"every person charged with an offence has the right to the benefit of the least severe of the prescribed punishments if the prescribed punishment for the offence has been changed between the time the*

*offence was committed and the time of sentencing;*". The Applicant has been convicted by the Court. He longer is a person charged with an offence. He has been dealt with by the Court. Section 14 (2) (n) cannot be relied upon by him. The Corrections Service have stated through the affidavit of Solomoni Turaga that the Applicant was incarcerated where he was to serve a minimum sentence of 7 years 6 months and 20 days before being considered for parole. The Applicants earliest release date is 8th April 2026. The Applicant lost one month's remission after he was found in possession of contraband (Fijian Tobacco "suki"). This was following a Tribunal proceeding where the Applicant pleaded guilty. Following the Tribunal new possible release date of the Applicant is 8th May 2026. Section 27 (4) of the Corrections Act is clear that a prisoner must serve the full term of the non parole period and subsection 5 of Section 27 states that it applies to any sentence delivered before or after the commencement of the amendment.

- [7] The Applicants argument that Section 26 of the Constitution is being breached by the retrospect application of Section 27 (5) of the Corrections Act 2006. The Applicant has not shown how he is being treated differently from other prisoners. The amended law will apply to all prisoners. He is not being singled out or treated differently.
- [8] The material available does not disclose an arguable case favouring the grant of the relief sought, or what might, on further consideration, be an arguable case. The application for Leave to Apply for Judicial Review is dismissed and struck out. No orders as to costs.
- [9] **Court Orders:**
- (a) The application for Leave to Apply for Judicial Review is dismissed and struck out.
- (b) No orders as to costs.

  
Chaitanya S.C.A Lakshman  
Puisne Judge



17th June 2024