

Office

IN THE COURT OF APPEAL, FIJI ISLANDS
ON APPEAL FROM THE HIGH COURT OF FIJI

CRIMINAL APPEAL NO. AAU0093 OF 2008S
(High Court Criminal Action No. HAC 023 of 2008L)

BETWEEN: KINI SULUA

Appellant

AND: THE STATE

Respondent

In Chambers: Randall Powell, Justice of Appeal

Hearing: Tuesday, 4th November 2008, Suva

Counsel: Appellant in Person
 A.G. Elliott for the Respondent

Date of Judgment: Tuesday 4th November 2008, Suva

RULING

[1] On 27 August 2008 Kini Sulua ("Mr Sulua") was found guilty and convicted of one count of unlawful possession of an illicit drug namely a 5.2 kg sack of cannabis sativa or marijuana.

[2] He was 33 years old, had two children aged 1 month and 3 years, had no history of drug use or supply, broke down in tears during his mitigation plea and sought forgiveness from the Court. He had two minor convictions for drunk and disorderly but the trial judge disregarded those convictions and treated him as a person of previous good character.

[3] The trial judge took into account that a custodial sentence would cause hardship to his family and sentenced him to 8 years in prison.

[4] On 11 September 2008 Mr Sulua lodged an appeal against conviction and sentence. It was received by the Court of Appeal on 24 September 2008 and is thus within time.

[5] Section 21 of the Court of Appeal Act provides:

(1) That a person convicted on a trial before the High Court may appeal under this Part to the Court of Appeal –

(a) against his conviction on any ground of appeal which involves a question of law alone;

(b) with leave of the Court of Appeal or upon a certificate of the judge who tried him that it is a fit case against his conviction on any ground of appeal which involves a question of fact alone or a question of mixed law and fact or any other ground which appears to the Court to be a sufficient ground of appeal; and

(c) with the leave of the Court of Appeal against the sentence passed on his conviction unless the sentence is one fixed by law.

[6] The proposed grounds of appeal insofar as they relate to his conviction are all matters of fact or at best mixed questions of law and fact and in my opinion they have little prospect of success and accordingly leave to appeal the conviction is refused.

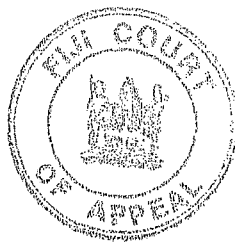
[7] Leave to appeal the sentence is granted. Mr Sulua was charged with possession of marijuana, albeit a large amount. He was not charged with trafficking and much of what the trial judge said about marijuana (for example that use of marijuana in our

community is linked with violent crime) could equally be said about kava and alcohol.

- [8] I understand that the Court has not published any comprehensive sentencing guidelines for drug related offences but in all events in my opinion there are reasonable prospects that the Court of Appeal will in the circumstances of this case find 8 years prison manifestly excessive.
- [9] I am supported in this conclusion by the decision of the High Court in *State v Naidua* HAC 044 of 2007 where possession of 1.765kg of cannabis sativa attracted a sentence of 3 years imprisonment even though the accused had 58 previous convictions a number of which were for possession of dangerous drugs.
- [10] Moreover other relevant cases include *The State v Bravo* [2008] HAC 145/07 where a person tried and found guilty of the importation and possession of 2.1k of cocaine received an 8 year prison sentence and *The State v Joji Mate* HAA28/08 where the accused received a 3 year prison sentence for possessing 544 grams even though he had served 5 years in prison for a previous drug offence.
- [11] It seems to me that it is time the Fiji Court of Appeal handed down some sentencing guidelines for drug offences which, inter alia, categorise the seriousness of offences according to types and quantities of drugs. Counsel for the State agrees that this appeal is a suitable vehicle for handing down such guidelines.
- [12] Accordingly I recommend that legal aid be granted to the appellant for the bringing of this appeal and express the hope that it can be made ready for hearing in the week beginning 23 March 2009.

[13] The orders of the Court are:

1. Leave to appeal against sentence is granted
2. Leave to appeal against conviction is refused



Randall Powell

Randall Powell
Justice of Appeal

Solicitors:

Appellant in Person
Office of the Director of Public Prosecutions, Suva for the Respondent

MEMORANDUM

To: Justice Byrne

From: Justice Powell

Date: 5 November 2008

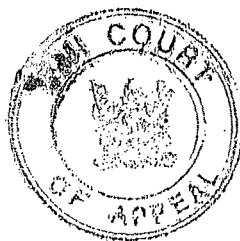
Guidelines on Sentencing for Drug Offences

I attach a copy of a Ruling given by me yesterday in *Salua v The State* AAU0093 of 2008S in which leave to appeal sentence was given in a matter involving the possession of drugs.

You will see from the Ruling and the few cases referred to therein that:

1. There is great variation in the sentences that are being handed down for drug offences;
2. That the State agrees that this is a suitable vehicle for the Court of Appeal to give comprehensive Sentencing Guidelines for drug offences
3. That it is hoped that this case can be ready for hearing in the week beginning 23 March 2008.

Justice Lloyd will be sitting during that week. He has a great deal of experience in dealing with drug offences and with sentencing guidelines for drug offences and it would be logical to list the matter in a Court that included Justice Lloyd.



Robert Powell

Justice Powell

Enc.

c.c: Acting Chief Justice
Justice Lloyd