

Official copy

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

CRIMINAL APPEAL NO. AAU0065 OF 2008S
(High Court Criminal Action No.HAA28 of 2008S)

BETWEEN:

JOJI MATE

Appellant

AND:

THE STATE

Respondent

In Chambers: Randall Powell, Justice of Appeal

Hearing: Wednesday, 5th November 2008, Suva

Counsel: Appellant in Person
A. Driu for the Respondent

Date of Ruling: Wednesday, 5th November 2008, Suva

RULING

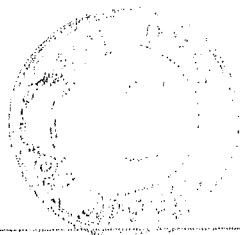
[1] On 21 January 2008 Jose Mate ("Mr Mate") was found guilty and convicted of being in possession of an illicit drug namely 544.2 grams of cannabis sativa or marijuana.

[2] He was 32 years old, had 7 year old child. It was his second conviction in relation to the possession of drugs, he having been sentenced on 14 December 2000 to five years imprisonment for a similar offence, namely 726.4 grams of cannabis sativa.

- [3] The Magistrate referred to sentencing guide-lines said to have been issued by the Lautoka High Court which suggested that sentences for possession of over 500g is to be "*full time custodial*" and took into account that he had admitted selling drugs for 18 months. The Magistrate took 6 years as a starting point and reduced this by 6 months for his "*clean record since 2000.*" He increased this by 6 months for his admission that he had been selling drugs for more than a year.
- [4] On 6 May 2008 the High Court (Govind J) reduced the sentence to 3 years imprisonment noting that earlier that morning he had sentenced a first offender who pleaded guilty to possessing 1.1 kg of cannabis to 16 months in prison.
- [5] By Notice dated 22 May 2008 received by the Court on 12 June 2008 on the grounds that three years was still harsh and excessive, that he should have got the same sentence as the person who Govind J sentenced to 16 months and that Govind J did not take into account that he had a gash on his head which had affected him mentally.
- [6] Pursuant to section 22(1A) of the Court of Appeal Act Mr Mate does not need leave to appeal from Govind J's judgment if his appeal is that the sentence was an unlawful one or was passed in consequence of an error of law. However this proposed appeal raises no error of law.
-
- [7] In my opinion the proposed appeal has no merit. The person Govind J sentenced to 16 months in prison was a first offender who had pleaded guilty and it seems to me, having regard to similar cases where possessors of cannabis have received much harsher sentences, Mr Mate should consider himself fortunate that Govind J reduced his sentence to 3 years.

[8] I explained to Mr Mate that here was a real possibility that his sentence would be increased by the Court of Appeal if he was permitted to appeal.

[9] Mr Mate then withdraw his appeal. In any event leave to appeal the sentence of the High Court is refused.



Randall Powell

Randall Powell
Justice of Appeal

Solicitors:

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