

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

MISC. ACTION NO. 04 OF 2008S  
(High Court Action No. HAA 3 /2008S)

BETWEEN:            AVAITIA TULELE

*Appellant*

AND:                THE STATE

*Respondent*

Coram:            Byrne, JA  
                         Pathik, JA  
                         Powell, JA

Hearing:           Monday, 14 April 2008, Suva

Counsel:           Appellant in Person  
                         A Driu for the Respondent

Date of Judgment: Monday, 14 April 2008, Suva

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JUDGMENT

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[1]    On 27 July 2007 Avaitia Tulele was sentenced by Resident Magistrate Waqaivolavola to 3½ years imprisonment for possession of 444.9 grams of cocaine.

[2]    Mr Tulele appealed against the severity of the sentence and on 7 March 2008, following a hearing on 22 February 2008, Mataitoga J, in the appellate jurisdiction

of the High Court, ordered that the sentence passed in the Magistrate's Court be vacated with a sentence of 1 year 3 months imprisonment, suspended for 2 years, with effect from 27 July 2007.

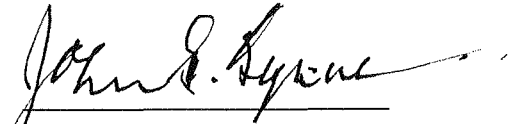
[3] It seems however that the Magistrate sentenced Mr Tulele under Extended Jurisdiction and that any appeal ought to have been heard by the Court of Appeal, not by the High Court in its appellate jurisdiction.

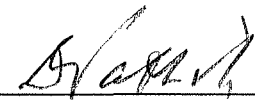
[4] The Court has reviewed the submissions of the parties that were before Maitaitoga J, and, in Court today, given the parties an opportunity to further address this Court.

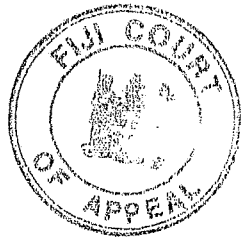
[5] This Court respectfully adopts the reasoning of Maitaitoga J set out fully in paragraphs 6 to 13 inclusive of his purported Ruling of 7 March 2008 and has come to the same conclusion as to the appropriate sentence.

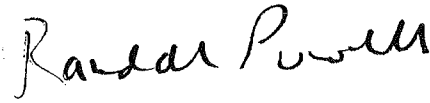
[6] Accordingly:

1. The appeal against sentence is allowed.
2. The sentence passed by the learned Magistrate is vacated and substituted with a sentence of 1 year 3 months imprisonment, suspended for 2 years, with effect from 27 July 2007.

  
Byrne, JA

  
Pathik, JA



  
Powell, JA

Solicitors:

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