

IN THE COURT OF APPEAL, FIJI ISLANDS
AT SUVA

CRIMINAL APPEAL NO. AAU0084 OF 2007
[On Appeal From the High Court of Fiji]

BETWEEN : VILIAME VURU *Appellant*
AND : THE STATE *Respondent*

Coram : Byrne, J. A.
Hickie, J. A.
Khan, J. A.

Counsel : Ms R. Senikuraciri for the Appellant
W. Kurisaqila for the Respondent

Date of Hearing : 25th November 2008
Date of Judgment: 3rd March 2009

JUDGMENT OF THE COURT

- [1] In June 2007 the Appellant was convicted on his guilty plea of one count of *Possession of 901 grams of an Illicit Drug* namely cannabis sativa contrary to Section 5(a) of the Illicit Drugs Control Act 2004.
- [2] On the 5th of July 2007 the High Court sentenced the Appellant to a term of 3 years 11 months imprisonment.
- [3] On the 18th of January 2008 leave was granted by a single Judge of this Court to appeal that sentence on the ground that it was unduly harsh and excessive.

- [4] Section 5 of the Illicit Drugs Control Act creates the offence of amongst other things Possession of Illicit Drugs and imposes a sentence ceiling of \$1,000,000.00 or imprisonment for life or both.
- [5] At the conclusion of argument and particularly the submissions of the Appellant, counsel for the Respondent conceded the appeal. We then stated that we would give our Judgment later which we now do.
- [6] We consider the concession by the Respondent was correct because in our Judgment the sentence of the High Court was in excess of that which we consider should have been imposed. A reference to some previous cases is useful. It is also to be noted that in Criminal Appeal No. AAU0093 of 2008S Kini Sulua -v- The State in a Ruling given on the 4th of November 2008 Powell J. A. stated that it seemed to him time that 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. The Judge hoped that the Appellant's appeal for which he granted leave could be made ready for hearing in the session of the Court commencing on the 3rd of March 2009. It has not yet been fixed for hearing although there are dates available from the 26th of March to the 1st of April.
- [7] We hope that the Court will be able to give guidelines as suggested by Powell J. A. but we do not need them in this case because in our view the sentence imposed by the High Court was manifestly excessive. In Avaitia Tulele Misc. 4 of 2008S this Court granted an appeal by reducing an Illicit Drug sentence of 3½ years for

444.9 grams of cocaine, to an imprisonment term of 1 year and 3 months. In contrast to the instant case, whilst the quantity of drugs in question amounted to over double that in Tulele, and the drug was marijuana, a much lower ranking drug compared with cocaine, it was conceded by the Respondent that cocaine also fetches a much higher street price than marijuana.

[8] In this case the Appellant was sentenced to serve a sentence which was only 1 month short of a full 4 year imprisonment term for ***Possession of Marijuana*** although a larger quantity than in the Tulele case.

[9] Applying simple arithmetic and logic in our view based on these two cases it would be reasonable to reduce the sentence of the Appellant to 2½ years dating from the 5th of July 2007.

[10] The order of the Court therefore is that the appeal is upheld and for the sentence of 3 years and 11 months imposed by the High Court there is substituted the sentence of 2 years and 6 months.



John E. Byrne
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Byrne, J. A.

J. A. Hickie
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Hickie, J. A.

J. A. Khan
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Khan, J. A.

At Suva
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