**IN THE COURT OF APPEAL**
**[On Appeal from the High Court]**

**CRIMINAL APPEAL NO. AAU109 OF 2013**
**[High Court Case No. HAC 225/11]**

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| **BETWEEN** | : | **AINARS KREIMANIS** |
| | | *Appellant* |
| **AND** | : | **THE STATE** |
| | | *Respondent* |
| **Coram** | : | Goundar JA |
| **Counsel** | : | Mr J. Savou for the Appellant<br>Mr. M. Korovou for the Respondent |
| **Date of Hearing** | : | 13 August 2014 |
| **Date of Ruling** | : | 16 January 2015 |

## RULING

[1] This is a timely application for leave to appeal against conviction and sentence. The appellant was convicted of being in possession of an illicit drug, namely Methamphetamines. The total weight of the drugs was 5.6kg. On 15 October 2013, he was sentenced to 13 years and 1 month imprisonment with a non parole period of 12 years.

[2] The grounds of appeal are as follows:

**Appeal against conviction**

1. The Learned Judge caused the trial to miscarry when:

i. He allowed the unrepresented appellant to endorse the agreed facts which limited the ability of the unrepresented appellant from asking pertinent questions regarding his case;

ii. He did not make necessary arrangements for a translator who spoke the Russian language to be present to assist the unrepresented accused.

2. The Learned Trial Judge erred in law and fact when he unfairly disallowed the unrepresented appellant from asking questions with reference to previous inconsistent statements of witnesses.

3. The State acted unfairly when they did not call as a witness the Russian translator whom had interpreted during the appellant's caution interview process.

4. The learned Trial Judge erred in law when his comments at paragraph 20, 44 and 62 of the Summing Up prejudiced the appellant.

**Appeal against sentence**

1. The Learned sentencing Judge erred in law and fact when he chose a starting point of sentencing without any proper basis as a result of the absence of any tariff on the said offending.

2. The Learned sentencing Judge erred in law and fact when he chose as an aggravating feature matters which had already been accounted for when the court had convicted the appellant.

**Conviction appeal**

[3] Ground one lacks merit. In the early stage of the proceedings, the appellant was represented by counsel. Before the commencement of the trial, he waived his right to counsel and elected to represent himself. According to the judge's notes, he was accorded services of a Russian translator when he signed the agreed facts. He made no complaints to the trial judge that he did not understand the facts before signing the document. There was no reason for the trial judge to believe that the appellant did not appreciate the nature of the agreed facts before signing the document. The agreed facts were properly allowed and the trial judge's directions on those facts were correct in law. Ground one is not arguable.

[4] The trial judge's notes does not support the error alleged on ground two. The appellant chose to represent himself. If he was handicapped in effectively cross examining the prosecution witnesses on their previous statements then that was his own making. There is nothing in the record to suggest that the trial judge acted improperly to stop the appellant from adducing admissible evidence. Ground two is not arguable.

[5] The Russian translator who was present during the appellant's caution interview was no longer available. Apparently he had left the country by the time the trial was held. The appellant did not make any incriminating statement in his caution interview. The State did not rely on the caution interview. The caution interview was only used to cross examine the appellant on the inconsistencies in his evidence. In these circumstances, there was no need to call the translator as a witness. Ground three is not arguable.

[6] The appellant further contends that the trial judge's directions at paragraphs 20, 44 and 62 were prejudicial to him. This contention is vague and lacks particulars of the alleged prejudice. The learned trial judge at paragraphs 20, 44 and 62 gave an analysis of the appellant's evidence and how the assessors should treat his evidence. The directions are correct in law and fact. Ground four is not arguable.

**Sentence appeal**

[7] The first alleged error is that the trial judge chose a starting point without any proper basis. There is no hard and fast rule regarding the selection of the starting point. Generally the starting point is selected from the established tariff without regard to mitigating or aggravating factors. If aggravating factors are subsumed in the starting point, then double counting of the aggravating factors should be avoided.

[8] In his sentencing remarks, the trial judge said there was no set tariff for the possession of Methamphetamines. However, after considering overseas and local cases, the trial judge concluded that the tariff of 10 to 16 years' imprisonment was appropriate for more than 5kg of Methamphetamines. The trial judge used 14 years as a starting point, added 2 years to reflect the aggravating factors and deducted 1 year for the mitigating factors. A further

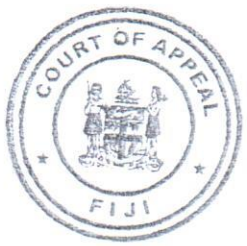
reduction of 23 months was made to reflect the appellant's remand period. The final sentence arrived at was 13 years and 1 month imprisonment.

[9] The second alleged error is that the trial judge took into account improper aggravating factors. The drugs were concealed in picture frames (some degree of sophistication used) and imported into Fiji. The quantity was large. These factors were correctly identified as the aggravating factors.

[10] There is no arguable error in the sentencing discretion of the trial judge.

**Result**

[11] Leave to appeal against conviction and sentence is refused.

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Hon. Mr. Justice D. Goundar
**JUSTICE OF APPEAL**

**Solicitors:**
Office of the Director of Legal Aid Commission for Appellant
Office of the Director of Public Prosecutions for State