

IN THE HIGH COURT OF FIJI
AT LAUTOKA
CRIMINAL JURISDICTION

CRIMINAL CASE NO.: HAC 13 OF 2014

STATE

-v-

GREGORY WILCOX STIRES

Counsels : Mr. J. Niudamu for the State
Ms. L. Jiuta for the accused
Date of Trial : 16 July 2014-17 July 2014
Date of Summing Up : 18 July 2014
Date of Judgment : 21 July 2014
Date of Sentence : 30 July 2014

SENTENCE

1. You are before the Court for sentence, after being convicted to the following charge.

Statement of offence

UNLAWFUL POSSESSION OF ILLICIT DRUGS: Contrary to section 5 (a) of the ILLICIT DRUGS CONTROL ACT of 2004.

Particulars of Offence

Gregory Wilcox Stires on the 2nd day of February 2014 at NADI in the WESTERN DIVISION, without lawful authority, was found in possession of illicit drugs, namely METHAMPHETAMINES weighing 3.8 Kilograms.

2. You pleaded not guilty to above charge. Following trial lasting three days in this Court you were found guilty on above count against you.
3. After considering the unanimous verdict of Guilty of the assessors and having reviewed the evidence and summing up in this trial, the Court decided to concur the verdict of the assessors and found you guilty of the above charge.
4. The following facts were proven in evidence during the trial. You entered into Fiji on 2.2.2014 from Nadi International Airport carrying a brown suitcase. When custom officers searched this suitcase, they found 3.8 Kg of Methamphetamines concealed wrapped around in the rim of the bag in Black plastic. The Drug was confirmed to be Methamphetamines by the Forensic evidence which is an agreed fact.
5. From the evidence it is clear that you had entered this country with knowledge of this drug hidden in that bag.
6. You had no remorse for your above conduct.
7. According to the Illicit Drugs Control Act the maximum punishment for Possession of Illicit Drugs is a fine not exceeding \$1,000,000 or Imprisonment for life or both. It is a serious offence.
8. The tariff for possession of Illicit Drugs is well settled since the Judgment of **Sulva v State** [2012] FJCA 33; AAU 0093.2008 (31 May 2012) where the Court of Appeal laid down the tariff for possession of Cannabis. It was held that possessing of 4000g and above of cannabis Sativa, tariff should be a sentence between 7 to 14 years imprisonment.
9. **In re Koroi** [2012] FJHC 1029; HAR 002-006.2012 (20 April 2012), Justice Madigan had held that appropriate starting point of sentence for possession of very large quantities (5 Kg or more) could be custodial sentences in the range of ten to fifteen years.
10. In **State v Balaggan-Sentence** [2012] FJHC 1147:HAC 049.11 (4 June 2012) Justice Goundar had held:

“When sentencing drug-smugglers, regard must be made to the circumstances that exist in Fiji. Fiji does not have a sophisticated intelligence service to detect drug-smuggling. Our border security measures are not apt to deal with sophisticated drug-smuggling. Unless there is a tip off, it is easy to sneak in and out, hard drugs. In all cases, the hard drugs were for the overseas market. So Fiji is just being used by the drug-smugglers as a transit point for the reasons I have mentioned. Any punishment for dealing in hard drugs must therefore reflect the vulnerability of Fiji becoming a hub for the international drug-smugglers.”

In this case sentence 11 ½ years with non parole period of 9 years was ordered for counts of attempted importation and possession of 521.6 grams of Cocaine.

11. In **State v Lata** [2013] FJHC 136; HAC 83.2010 (25 March 2013) Justice Thurairaja imposed 18 years imprisonment with 16 years as non parole period for a count of possession of 1990.4 grams of Cocaine. He had taken up the view that when there is a possession, trafficking of commercial quantity the tariff should be between 15 years to 20 years.

12. In **R v Fatu** [2006] 2NZLR 72 (CA) it was held that sentencing brand for cases involving the sale or supply of methamphetamine of very large commercial quantities (500 g or more) is ten years to life imprisonment.

13. In the same case the Crown had submitted the following position:

“Methamphetamine abuse can fairly be characterized as the most serious drug problem the country faces at present. The various ways in which the drug threatens the community are well-known. Methamphetamine is a particularly destructive drug for users; it is highly addictive with profound mental and physical side-effects. It induces aggressive and irrational behavior, and is regularly responsible for other offending involving extreme violence, a phenomenon not commonly associated with other drugs. It has created a thriving industry, in which organized crime is heavily involved at all levels. The manufacturing process is particularly dangerous. It is submitted, with respect, that if it is appropriate to draw any distinction between Class A drugs, methamphetamine can fairly lay claim to a place in the most serious category.”

14. In **R v Arunguren** (1994) 99 Cr App R(S) 347 it was held by Lord Chief Justice Taylor that:
*“Instead of using the factor of monetary value of such hard drugs, as heretofore, the new yardstick for measuring the relative significance of any seizure of class A drugs was by weight rather than the street value. Thus for the guidelines laid down in **Bilinski** (1988) 86 Cr. App.R. 146 following should be substituted: where the weight of the drugs at 100 per cent purity was of the order of 500 grammes or more, sentences of 10 years imprisonment and upwards were appropriate. Where the weight at 100 per cent purity was of the order of five kilogrammes or more, sentences of 14 years or more were appropriate.*

15. The only tariff in Fiji set out for the possession of Methamphetamines is 10 to 16 years imprisonment for quantity of more than 5 kg by this Court, I am of the view that acceptable tariff for 2-5 kg should be 8 to 14 years imprisonment.

16. Considering the above I commence your sentence at 10 years imprisonment.

17. Aggravating factors;

- (a) The weight of the illicit drug-3.8 Kg
- (b) How the drug was concealed in suitcase.

Considering all, I increase your sentence by 2 years now the sentence is 12 years imprisonment.

18. Mitigating circumstances

- (a) You are first offender at the age of 60 years
- (b) Father of two children
- (c) According to you, you are suffering from Chronic Lymphocytic Leukemia and as a result you are having discomfort on your leg and cannot walk properly.

Considering all, I reduce 2 years from your sentence now your sentence is 10 years imprisonment.

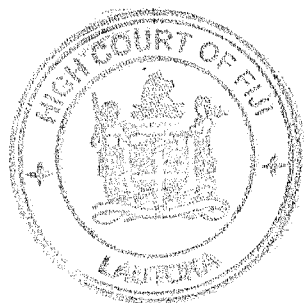
19. You are in remand since 2.2.2014 for a period of 6 months. I deduct 6 months from your sentence. Now your sentence is 9 years and 6 months.

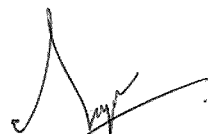
20. Considering Section 18 (1) of the Sentencing and Penalties Decree, I impose 8 years as non parole period.

21. You are sentenced to 9 years and 6 months imprisonment. You will not be eligible for parole until you complete serving 8 years of imprisonment.

22. The drugs are to be destroyed within 14 days after photographs are taken and a report to that effect made to this Court.

23. 30 days to appeal to Court of Appeal.




Sudharshana De Silva
JUDGE

At Lautoka
30th July 2014

Solicitors: Office of the Director of Public Prosecution
Legal Aid Commission for all the Accused