

IN THE HIGH COURT OF FIJI AT SUVA

CASE NO: HAC. 355 of 2016

[CRIMINAL JURISDICTION]

STATE

V

ATIKINI MATAKOROVATU

Counsel : Ms. D. Kumar for State
Ms. P. Lal for accused
Sentence on : 29th September 2017

SENTENCE

1. Atikini Matakoroatu, you were charged with another for the following offences;

FIRST COUNT

Statement of Offence

UNLAWFUL POSSESSION OF ILLICIT DRUGS: contrary to section 5(a) of the Illicit Drugs Control Act 2004.

Particulars of Offence

ARISI KAITANI AND ATIKINI MATAKOROVATU on the 15th day of September 2016 at Kadavu in the Eastern Division, unlawfully possessed 1184.4grams of an illicit drug known as cannabis sativa.

SECOND COUNT

Statement of Offence

UNLAWFUL CULTIVATION OF ILLICIT DRUGS: contrary to section 5(a) of the Illicit Drugs Control Act 2004.

Particulars of Offence

ARISI KAITANI AND ATIKINI MATAKOROVATU on the 15th day of September 2016 at Kadavu in the Eastern Division, unlawfully cultivated 7975.7 grams of an illicit drug known as cannabis sativa.

2. On 20/01/17 you pleaded guilty to the above offences and you were convicted accordingly on 21/07/17.
3. The summary of facts you admitted on 21/07/17 are as follows;
 1. *The complainant in this matter is Corporal Semi Vakanuinui, who led a team of 12 police officers in a raid at Kadavu.*
 2. *The second accused person is Atekini Matakorovatu, 18 years, Farmer of Lavidi Village, Nakasaleka, Kadavu.*
 3. *On 15 September 2016, a team of 12 police officers were on drug raid operation called Cavuraka 2 at Kadavu. At Lavidi village, the raid team came across a farm called Touva where they saw the accused person and another.*
 4. *As the raid team headed by Cpl. Semi, reached the farm, they saw the accused person and another uprooting plants believed to be marijuana. The team then questioned the accused person and uprooted all the plants they believed to be marijuana, totaling 824 plants.*
 5. *The team also searched the farm house and found some loose plant material. The uprooted plants and the loose plant material were seized by the raid team.*
 6. *The accused was arrested and taken to the Kadavu Police station where a report was lodged. The uprooted plants were handed over to the Kadavu Police.*
 7. *On 90 September 2016, the uprooted plants and the loose plant material were brought to the Government Analyst by the Kadavu Police. The samples were tested by the Government Analyst and a report was accordingly provided. All the 824 plants, ranging from 12cm to 129cm, tested positive for cannabis sativa, an illicit drug.*
 8. *The total weight of the uprooted plants was 7975.7grams. The total weight of the plant material was 1184.4grams.*
 9. *The accused was interviewed under caution on 15 September 2016, at the Kadavu Police station.*
 10. *The accused person has no previous convictions.*

4. The maximum penalty for committing an offence under section 5 of the Illicit Drugs Control Act 2004 ("Illicit Drugs Control Act") is a fine not exceeding \$1,000,000 or imprisonment for life or both.
5. According to the summary of facts the *cannabis sativa* involved in the first count where you are charged for possession was in the form of loose plant material that weighed 1184.4grams. On the second count you have admitted that you were involved in cultivating 824 plants of *cannabis sativa*.
6. The sentencing tariff established in the majority judgment in the case of *Sulua v State* [2012] FJCA 33; AAU0093.2008 (31 May 2012) is based on the weight of dried leaves of *cannabis sativa*. In your case on the first count you have been convicted of being in possession of loose plant material. The summary of facts prepared by the counsel for the State which you have admitted does not describe what is meant by plant material. However, it is clear that what you had in your possession were not dried leaves. Therefore, in my view, it would be unfair by you to apply the tariff established in *Sulua* (supra) to determine your sentence for the first count. The counsel for the State did not properly assist the court on this issue though it was raised by the court.
7. In the case of *Tuidama v State* [2016] FJHC 1027; HAA29.2016 (14 November 2016) this court decided to apply the following tariff for the offence of unlawful cultivation of illicit drugs;
 - a) The growing of a small number of plants for personal use by an offender on a non-commercial basis - 1 to 2 years imprisonment;
 - b) Small scale cultivation for a commercial purpose with the objective of deriving a profit - 3 to 7 years imprisonment;
 - c) Large scale commercial cultivation - 7 to 14 years imprisonment.
8. Cultivating up to 10 plants can be considered as non-commercial cultivation if there is no other evidence to the contrary. Cultivating more than 10 plants up to 100 plants can be considered as a small scale commercial cultivation and

cultivating more than 100 plants can be considered as a large scale commercial cultivation.

9. With regard to the second count you have admitted that you were involved in cultivating 824 plants. Your sentence for the second count should be within the range of 7 to 14 years imprisonment as you have been engaged in large scale commercial cultivation according to the above categorisation.
10. I will first determine the sentence for the second count. I select 7 years imprisonment as the starting point of your sentence.
11. Even though the weight of the plants was recorded as 7975.7 grams, you have been involved in cultivating 824 plants of *cannabis sativa*. The number of plants suggests that you have been involved in a very large scale cultivation of illicit drugs. Considering this factor I add 11 years to your sentence. The summary of facts does not reveal any other aggravating factor. Your sentence now is 18 years imprisonment.
12. In your mitigation, you have submitted that you are a first offender. You have cooperated with the police. You pleaded guilty for the two offences on the first day your plea was taken. Your counsel says that you are remorseful and you seek forgiveness from this court.
13. Considering your early guilty plea I deduct 6 years of your sentence. For the other mitigating factors, I deduct 2 years. Your sentence for the second count is 10 years imprisonment.
14. I do not find any aggravating factors in relation to the first count. Considering all the circumstances including the aforementioned mitigating factors, I sentence you for 2 years imprisonment for the first count.
15. I order that you serve the two sentences concurrently. Thus, your final sentence is 10 years imprisonment. I order that you are not eligible to be released on

parole until you serve 08 years of your sentence pursuant to the provisions of section 18 of the Sentencing and Penalties Act 2009.

16. State submits that you were arrested on 15/09/16 with regard to this case. Accordingly, you have spent around 01 year and 14 days in custody in relation to this case. The period you were in custody shall be regarded as a period of imprisonment already served by you in view of the provisions of section 24 of the Sentencing and Penalties Act. I order that the period to be considered as served should be 01 year and 01 month.

17. In the result, you are sentenced to an imprisonment term of 10 years with a non-parole period of 08 years. Considering the time spent in custody, the time remaining to be served is as follows;

Head Sentence - 08 years and 11 months

Non-parole period - 06 years and 11 months

18. 30 days to appeal to the Court of Appeal.



Vinsent S. Perera

JUDGE

Solicitors for the State : Office of the Director of Public Prosecutions, Suva.
Solicitor for the Accused : Legal Aid Commission, Suva.