

IN THE HIGH COURT OF FIJI
AT LABASA
CRIMINAL JURISDICTION

CRIMINAL CASE NO. HAC 04 of 2018
[Savusavu Criminal Case No. 190 of 2010]

BETWEEN : STATE

AND : SEVANAIA BATI

Counsel : Mr R Kumar for the State
Mr V Tuicolo for the Accused

Date of Hearing : 1 March 2018 and 16 March 2018

Date of Sentence : 21 August 2018

SENTENCE

[1] Sevanaia Bati, on 1 March 2018, you freely and voluntarily pleaded guilty to a charge of unlawful cultivation of marijuana contrary to section 5(a) of the Illicit Drugs Control Act. You were represented by counsel when you entered an informed guilty plea. You are convicted as charged.

[2] The facts are that on 22 June 2010, you were caught cultivating marijuana at Natuvu Settlement in Cakaudrove after a police raid. Altogether 71 marijuana plants were uprooted from your farm. The plants were between 27 cm and 129 cm in height. The plants weighed 4 kg. During the raid, the police also discovered 274.8 grams of dried leaves. Tests confirmed that the plants and the dried leaves were marijuana, botanically, known as Cannabis Sativa. Under caution, you admitted cultivating

marijuana for sale. You did not disclose the identity of your buyer. You gave a vague description of the buyer as 'a man from Taveuni'.

- [3] In mitigation, your counsel informed the court that you are 34 years old and married with a child. Your family is depended on you. You earn a living by farming. You seek clemency from the court.
- [4] On 2 March 2018, you were sentenced to 2 years' 1 week imprisonment with a non-parole period of 16 months' imprisonment in the Magistrates' Court after you pleaded guilty to cultivating 8 marijuana plants (Criminal Case No 55 of 2011). The facts of that case reveal that on 5 January 2011, you were caught cultivating marijuana for the second time. You committed the second offence after you were released on bail in the present case on 19 July 2010. The present case has been pending in the system for nearly eight years. The Magistrates' Court granted numerous adjournments without good cause, but to some extent, you are also responsible for the delay when you had absconded bail on at least two occasions.
- [5] In sentencing, the Court must have regard to the gravity of the offence you committed. The maximum punishment prescribed for cultivation of an illicit drug is discretionary life imprisonment. There is no guideline judgment especially for cultivation of marijuana. I am mindful that the guideline set by the majority in *Sulua v State* [2012] FJCA 33; AAU0093.2008 (31 May 2012) is solely based on the weight of the drugs. The gravity of the offence, however, depends on the weight and the purpose of possession or cultivation. As the Court of Appeal said in *Koroivuki v State* [2013] FJCA 15; AAU0018.2010 (5 March 2013) at [23]:

If there is evidence led by the prosecution regarding the purpose for which the offender had the drug in his possession, then that purpose becomes relevant in assessing the culpability of the offender. If the drug is of a small quantity and was intended for personal use, the court can take that into account in reducing the offender's culpability when passing sentence. If the drug was possessed with the intention to keep for another, that intention is relevant in assessing the offender's culpability and role in the joint enterprise. If the drug is intended for distribution or sale, a higher culpability is imputed on the offender. The list is not exhaustive. Further, the

court can impute various degrees of culpability based on commercial aspects involved. If the drug is kept in possession for sale, the degree of culpability will be much higher than if the drug was possessed for supply for no remuneration but as a favour for another. The criminality that is involved in each case will depend on the evidence led by the prosecution or facts admitted by the offender.

- [6] In *State v Vuicakau* [2018] FJHC 12; HAC01.2018 (19 January 2018) the offender was convicted of cultivating 21 marijuana plants after he entered an early guilty plea. When the plants were seized from the farm they were between 133 cm and 302 cm in height. The total weight of the raw plants was 17.1 kg. In sentencing the offender the Court was cautious in determining culpability solely on the weight of the illicit drug. The Court said that in cultivation cases the weight is determined by weighing the entire raw plants while in possession cases only the dried marijuana leaves are weighed to determine the weight. The offender was sentenced to 4 years' imprisonment with a non-parole period of 3 years for cultivation.
- [7] In *State v Salevuwai* [2018] FJHC 11; HAC02.2018 (19 January 2018), a first time offender pleaded guilty to cultivating 17 marijuana plants (the plants weighed 12 kg). He was sentenced to 3 years imprisonment with a non-parole period of 2 years.
- [8] In *State v Boleitamana* [2012] FJHC 876; HAC334.2011 (17 February 2012) Fernando J sentenced an offender to 3 years' imprisonment with a non-parole period of 2 ½ years after he pleaded guilty to cultivating 23 marijuana plants (the plants weighed 10.5 kg).
- [9] Your guilty plea is a mitigating factor. But there is little evidence of remorse. You pleaded guilty after 8 years and after you were sent to prison for committing a similar offence while you were on bail in this case. The main reason you pleaded guilty in this case is because you are seeking a concurrent sentence with your pre-existing sentence. I give you a discount of 1 year for your guilty plea.

- [10] At the time you committed the offence in this case you were a person with previous good character. I give you some credit for that fact. Otherwise, your personal or family circumstances have little mitigating value.
- [11] You are a matured man who made a conscious decision to cultivate marijuana for sale. People who cultivate marijuana for profit have little concern regarding the effects of this drug on the users or the society. A prison sentence is unavoidable. Deterrence and protection of the community are the primary purposes for sentence in cases of cultivating marijuana for sale.
- [12] I have considered both your individual criminality in this case and your overall criminality arising from the fact that you committed the second offence of cultivating marijuana while you were on bail in this case.
- [13] Your remand period in this case is 6 months and 5 days. I make a downward adjustment to your sentence to reflect your remand period. I also give you some concession for the fact that the case took 8 years to conclude. Not only I make a reduction in the term of your sentence, I take the delay into account to make your sentence concurrent with your pre-existing sentence.
- [14] Taking all these factors into account I sentence you to 3 ½ years' imprisonment with a non-parole period of 2 years, to be served concurrently with your pre-existing sentence.



.....
Hon. Mr Justice Daniel Goundar

Solicitors:

Office of the Director of Public Prosecutions for the State
Office of the Legal Aid Commission for the Accused