

IN THE HIGH COURT OF FIJI
AT LAUTOKA
CRIMINAL JURISDICTION

Criminal Case No. HAC 129 of 2014

STATE

V

PENIASI CEDRECA SUKANAKONIFEREDI

Ms. S. Navia with **Ms. S. Naibe** and **Ms. P. Lata** for the State
Mr. E. Sailo with **Mr A. Turuva** for the accused.

Dates of Trial : 13, 14, 18, 19 February 2019
Date of Judgment : 19 February 2019
Date of Sentence : 22 February 2019

SENTENCE

- 1.] After trial before this Court, the accused was convicted of three counts contrary to the Illicit Drugs Act 2004. They were:
 - A. Possession of 3.617 kilogrammes of methamphetamine
 - B. Possession of a controlled chemical namely 1.989 kilogrammes of pseudoephedrine, and
 - C. Possession of controlled equipment namely a pill punch press machine.

- 2.] Pursuant to another enquiry, irrelevant to these proceedings, the Police had cause to inspect the premises at Nadi Airport of a company registered in Fiji under the name of Energy Supplements Fiji Limited ("Energy"). Therein they discovered a

“warehouse” of pills both loose and packaged under odd names such as “Fast and Furious”, “Pink Devils” and “Purple XXX”. There were powders, creams and chemicals. There was also a pharmaceutical machine which was obviously used for punching out pills from a prepared sheet product.

- 3.] All of the items were seized and the accused arrested.
- 4.] Police forensic chemists analysed the seizures and the contents revealed the nature and weight of the drugs set out in the charges.
- 5.] The evidence of the accused’s custody and control of the items in the premises was overwhelming. He was a Director of Energy, the only person in the country running the business, had the sole key in existence to the premises and was the sole signatory to the company bank account in Fiji.
- 6.] There was evidence before the Court that a co-Director, resident abroad was directing operations by email instructions to the accused but this did not absolve the accused from being found in custody and control. The accused said in evidence that he would receive the orders from abroad, pack the order and send it to the customer by post.
- 7.] The maximum penalty for each of these offences is a \$1,000,000 fine or life imprisonment. That heavy maximum shows the extent of the legislature’s disapproval of any possession of, dealing in, importing of and manufacture of illicit drugs.
- 8.] In the case of ***Kumar*** [2017] FJHC 1217 (12 December 2018), Rajasinghe J. said:

“Methamphetamine is one of the most serious drug problems that the country faces at present. Perhaps, it could be more dangerous and destructive than any other drugs in the local market. It is a destructive drug for users as it is highly addictive with a myriad of adverse psychological consequences. Hence, I find, offences involved with (sic) such destructive drugs as methamphetamine are serious offences , which should be dealt with harsh and custodial punishment”.

- 9.] This Court agrees with these wise observations of the learned Judge. Whilst the penal attitude towards marijuana is softening in many parts of the developed world, there is no doubt that this much more insidious drug (methamphetamine) is destroying societies, families and young people. It is instantly addictive and often leads to bizarre and violent behaviour. The dealing in , manufacturing and supplying of methamphetamine creates an obvious risk to any customer or user of the drug.
- 10.] The sentencing bands for the possession of methamphetamine has been settled in Fiji in cases presided over by Temo j. and Rajasinghe J.
- 11.] In the case of ***Vakula*** (HAC 247 of 2016S) Temo J. followed the New Zealand Court of Appeal decision in ***Fatu*** [2006] 2NZLR72. The NZ court set categories of offending for the sale and supply of methamphetamine. Although they related to supply and sale, Temo J. agreed that for all dealing under section 5 of our Act, be it possession, sale, dealing, manufacturing etc., the ***Fatu*** bands should be adopted in Fiji, pending a contrary decision from the Court of Appeal or Supreme Court.
- 12.] The highest category of offending in ***Fatu*** is category 4 which would sentence dealing with “very large commercial quantities (500 grammes or more) “ to a term of imprisonment of between ten years and life imprisonment.
- 13.] The quantity of methamphetamine being possessed in this case is seven times the threshold for the most serious category found by the NZ Court of Appeal and must therefore attract a very heavy sentence indeed.
- 14.] The accused is 44 years old, married with three children. He worked for Energy in Fiji for 4 years before arrest but since his arrest in 2014 has been unemployed. He “apologises” to the Court for his involvement, but has shown little remorse apart from that apology delivered by his Counsel. He has supplied in mitigation two letters of character reference, one from the Tui Sabeto and one from the Pastor of the Sabeto Methodist church.

- 15.] The Tui Sabeto says he has known the accused for 30 years and says that he is well respected in the community and his acquaintances are inspired by his work ethic and dedication.
- 16.] Pastor Ketebaca writes that the accused has been a preacher in the church and has been entrusted as treasurer for 7 years.
- 17.] The first count being the most serious, I take a starting point of 20 years imprisonment. For his limited mitigation I deduct one year and for his clear record and 8 months spent in custody awaiting trial I deduct 2 years.
- 18.] The term of immediate imprisonment for possession of 3.617 of methamphetamine is 17 years.
- 19.] The offences of possession of controlled chemical and controlled equipment must be sentenced "*pari passu*" with the major methamphetamine offence. Pseudoephedrine is a precursor on the manufacture of methamphetamine and the controlled machine seized punches out tablets.
- 20.] Despite the denials of the accused in evidence, it is more than apparent that the workshop was being used to manufacture tablets of methamphetamine. The accused has not been charged with manufacture and he will not be sentenced for such. The relevance of the Court's finding goes to the seriousness of the possession of controlled chemical and controlled equipment.
- 21.] For each of Counts 2 and 3, I sentence the accused to a term of imprisonment of 15 years.
- 22.] All sentences will be served concurrently and he will serve a minimum term of 12 years before he is eligible for parole.
- 23.] It is to be hoped that such a severe sentence will deter others from engaging in this nefarious and destructive trade.

24.] Orders

1. Accused is sentenced to 17 years on Count 1.
2. Accused is sentenced to 15 years on Count 2.
3. Accused in sentenced to 15 years on Count 3.
4. All three sentences to be served concurrently.
5. He is to serve a minimum term of 12 years before being eligible for parole.



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Paul K. Madigan
Judge

22ND February 2019
At High Court Lautoka