

IN THE HIGH COURT OF FIJI AT SUVA

CASE NO: HAC. 412 of 2018

[CRIMINAL JURISDICTION]

STATE

V

JOELI WAQAVANUA

Counsel : Ms. U. Tamanikaiyaroi for the State
Ms. T. Kean for the Accused

Hearing on : 21st March 2019

Sentenced on : 12th April 2019

SENTENCE

1. Joeli Waqavanua, you stand convicted of the following offence upon your plea of guilty;

Statement of Offence

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

Particulars of Offence

JOELI WAQAVANUA on the 14th day of October 2018, at Kadavu, in the Eastern Division, without lawful authority cultivated one hundred and four (104) plants of illicit drugs known as Cannibas Sativa, weighing 4.4 kg.

2. The summary of facts you have admitted are as follows;

The Accused

- Joeli Waqavanua – 38 years of age, Farmer of Vukavu village, Kadavu.

The Complainant

- Sgt. 3349 Moape Tau – 38 years of age, Police Officer of Kadavu Police Station.

1. On 14th October 2018, at around 5.30am the complainant left Kadavu Police Station with PC 5322 Timoci and SC 1422 Sisa to check on information they received that the accused was cultivating plants believed to be Marijuana.
 2. Upon reaching Vukavu village, the complainant went with the accused and the two police officers and managed to locate the accused persons farm in an isolated area which had plants believed to be Marijuana cultivated on the land.
 3. The accused, upon admitting that Marijuana farm belonged to him to the complainant and two police officers was arrested. PC 5322 Timoci and SC 1422 Sisa then uprooted a total of 104 plants.
 4. The same was then escorted to Kadavu Police Station and handed over to the crime writer WSC. 2170 Selai who then packed the 104 plants and locked it in the exhibit room for safe keeping and to later be taken to Suva for drug analysis.
 5. On 22nd October 2018, the Principal Scientific Officer namely Miliana Werebauimona received 104 plants believed to be Marijuana plants for analysis. The result of the same was that the 104 green plants weighing 4.4kg is Indian Hemp botanically known as *Cannabis Sativa*. A certificate was produced to confirm the same.
 6. AI was interviewed under caution in the i-taukei language by PC 5322 Timoci at Kadavu Police Station on the same day. Upon having the allegations put to him, the accused admitted that the plants uprooted from his farm at Nagasagasa belong to him (Q&A 24), that it was marijuana plants (Q&A 25), that he had been planting the same for 3 months (Q&A.26), that this was his first time to plant marijuana (Q&Q>29), that he planted marijuana to help him financially (Q&A.30-31) and that he was the only person that planted marijuana (Q&A. 32).
3. 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.
 4. 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 based on the judgment in the case of *Meli Bavesi v State* [2004] FJHC 93; HAA 0027.2004;
 - 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; [Cultivating up to 10 plants]
 - b) Small scale cultivation for a commercial purpose with the objective of deriving a profit - 3 to 7 years imprisonment; [Cultivating more than 10 plants up to 100 plants]

c) Large scale commercial cultivation - 7 to 14 years imprisonment.
[Cultivating more than 100 plants]

5. You have cultivated 104 plants of *Cannabis Sativa* or Marijuana. Your sentence should therefore be within the range of 7 to 14 years imprisonment.
6. I would select 7 years imprisonment as the starting point of your sentence.
7. The number of plants you have cultivated exceeds the threshold for the applicable tariff category only by four plants. Therefore, I consider it appropriate not to increase your sentence based on the number of plants any further.
8. However, you have admitted that you are solely responsible for this cultivation and you did so for financial gain. Your sentence should reflect your role in the overall offending. It is pertinent to note that the same tariff is applicable to an offender who plays a lesser role in cultivating Marijuana simply as a worker. Therefore, a person who plays a leading role should receive a higher sentence compared to a mere worker.
9. In the circumstances, in view of your admission that you are solely responsible for cultivating the 104 plants, I would add 3 years to your sentence. I do not find any other aggravating factors. Your sentence now is an imprisonment term of 10 years.
10. You are 38 years old. It is submitted that you are separated from your wife and you have 5 children.
11. Your counsel submitted in your mitigation that you have entered an early guilty plea, you are a first offender and that you have cooperated with the police. Your counsel says that you are remorseful and you seek forgiveness from this court.
12. Considering the mitigating factors other than your early guilty plea, I would deduct 02 years from your sentence. Now your sentence is an imprisonment term

of 08 years. I would grant you a discount of one-third in view of your early guilty plea. I would therefore deduct a further period of 02 years and 08 months.

13. Your final sentence is an imprisonment term of 05 years and 04 months. Given that you are a first offender and your personal circumstances, I would fix you non-parole period at 04 years.
14. I note that you have been in custody since 14/10/18 and accordingly have spent around 06 months and 28 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 07 months.
15. In the result, you are sentenced to an imprisonment term of 05 years and 04 months with a non-parole period of 04 years. Considering the time spent in custody, the time remaining to be served is as follows;

Head Sentence - 04 years and 09 months

Non-parole period - 03 years and 05 months

16. Thirty (30) days to appeal to the Court of Appeal.




Vinsent S. Perera
JUDGE

Solicitors;

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