

IN THE HIGH COURT OF FIJI
AT LAUTOKA
CRIMINAL JURISDICTION

CRIMINAL CASE NO. HAC 116 OF 2015

STATE

V

SOSICENI TOA

Counsel : Ms. R. Uce for the State.
: Ms. U. Baleilevuka for the Accused.

Dates of Hearing : 27, 28 November, 02, 03, 04, 05, 06, 10, 13
December, 2019

Closing Speeches : 17 December, 2019

Date of Summing Up : 18 December, 2019

Date of Judgment : 20 December, 2019

Sentence Hearing : 30 January, 2020

Date of Sentence : 31 January, 2020

SENTENCE

1. In a judgment delivered on 20th December, 2019 this court found the accused guilty for the first count of attempted unlawful importation of illicit drugs and convicted him accordingly. The accused was, however, acquitted of the second count as per the following information:

FIRST COUNT

Statement of Offence

ATTEMPTED UNLAWFUL IMPORTATION OF ILLICIT DRUGS: Contrary to section 4 (1) and section 9 of the Illicit Drugs Control Act 2004.

Particulars of Offence

SOSICENI TOA between the 9th day of July 2015 and the 13th day of July 2015 together with persons unknown attempted to import illicit drugs, namely methamphetamine weighing approximately 20.3kg, into the Republic of Fiji, without lawful authority.

SECOND COUNT

Statement of Offence

ATTEMPTED UNLAWFUL IMPORTATION OF ILLICIT DRUGS: Contrary to section 4 (1) and section 9 of the Illicit Drugs Control Act 2004.

Particulars of Offence

SOSICENI TOA and other persons unknown between the 17th day of May 2015 and the 25th day of July, 2015 attempted to import illicit drugs, namely methamphetamine weighing approximately 79.3kg, into the Republic of Fiji, without lawful authority.

2. The brief facts were as follows:-

The accused between 9th July, 2015 and the 13th July, 2015 together with some persons unknown attempted to import into Fiji illicit drugs namely methamphetamine weighing approximately 20.3 kg without lawful authority.

The accused ordered an industrial pressure cooker from Mexico with packets of methamphetamine concealed in it. At the Los Angeles Airport the consignment was intercepted by the US Customs and Border Protection Officers where the contents were tested which was positive to the illicit drugs methamphetamine, here the contents were replaced with sand.

3. The consignment was then subjected to international control delivery monitored by the law enforcement agencies. The Fiji Police Force was alerted

and they were aware of the consignment, after the consignment arrived at the Nadi Airport the accused on 13th July, 2015 collected the consignment, loaded it in his car and then rushed out of the airport.

4. The police officers gave chase in a car but were unable to stop the accused this alerted the accused who was able to hide the consignment in a sugar cane field to avoid detection by the police. According to the analyst report the purity level of the illicit drugs were 97.4%.
5. The accused was later arrested by police and upon investigation the consignment was located.
6. Both counsel filed sentence and mitigation submissions and also made oral submissions during the sentence hearing for which this court is grateful.
7. Counsel for the accused presented the following personal details and mitigation on behalf of the accused.
 - a) The accused was 31 years of age at the time of the offending;
 - b) He is a first offender;
 - c) Separated from his wife, has 3 children ages 16, 12 and 9 years respectively;
 - d) Self-employed businessman;
 - e) Migrated to Australia at the age of 18 years and was brought up by his single mother and maternal grandparents;
 - f) In Australia the accused was the sole bread winner of his family.
8. The accused comes to court with good character which is a positive factor in his favour, however, the personal and family background of an accused has little mitigating value in cases involving drug smuggling offences.

AGGRAVATING FACTORS

9. The following aggravating factors are obvious:

Planning

- a) There is a high degree of planning and premeditation involved, the illicit drugs were concealed in an industrial pressure cooker to avoid detection.

Commercial Quantity

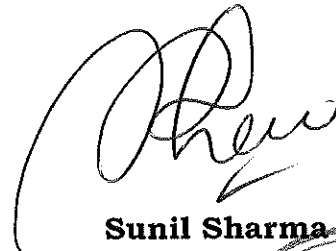
- b) The quantity of illicit drugs is substantial 20.3 kg is not a small amount it was most certainly for commercial sale with a high level of purity being 97.4%.
10. The maximum penalty for the offence of attempt to import illicit drugs under the Illicit Drugs Control Act is 14 years imprisonment or a fine of \$500,000.00 or both. Currently there is no tariff for this offending.
11. Bearing in mind the objective seriousness of the offence committed I select a starting point of 9 years imprisonment. For the aggravating factors I add 4 years bringing the interim sentence to 13 years imprisonment.
12. For the mitigating factors and good character I reduce the sentence by 2 years. The sentence of the accused is now 11 years imprisonment. The accused has been in remand for 1 year 9 months and 16 days which is deducted as a period of imprisonment already served.
13. The final sentence is 9 years 2 months and 14 days imprisonment.

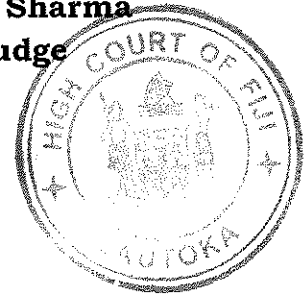
14. Mr. Toa you have committed a very serious offence, any attempt towards drugs smuggling cannot be taken lightly that is the reason why the law makers have reflected the seriousness of this kind of offence in the punishment. Luckily the drugs were detected before it could enter Fiji, the consequences would have been very serious had it entered the Fijian market.
15. This court appreciates the vigilance of the US Customs and Border Protection Officers in detecting the drug laden consignment. Considering the serious nature of the offending and the circumstances of the offending a long term imprisonment becomes inevitable.
16. Methamphetamine is a highly addictive hard drug which has many adverse effects including the potential of causing severe medical conditions to the extent that users have lost their lives or have ended up with permanent mental health problems. This court denounces the conduct of the accused.
17. The purpose of this sentence is to punish offenders to an extent and in a manner which just in all the circumstances of this case and to deter offenders and other persons from committing offences of the same and similar nature.
18. It is noted that the accused is a young and first offender who has committed a very serious offence, however, this court has also taken into account the fact that there should be a provision made for the accused rehabilitation as well.
19. In accordance with section 18 (1) of the Sentencing and Penalties Act (as amended) I impose 8 years imprisonment as a non-parole period to be served before the accused is eligible for parole. I consider this non-parole period to be appropriate in the rehabilitation of the accused.

CONCLUSION

20. The accused is sentenced to 9 years 2 months and 14 days imprisonment with a non-parole period of 8 years imprisonment to be served with immediate effect.

21. 30 days to appeal to the Court of Appeal.


Sunil Sharma
Judge



At Lautoka

31 January 2020

Solicitors

Office of the Director of Public Prosecutions for the State.

Messrs. Baleilevuka & Associates, Nadi for the Accused.