

IN THE HIGH COURT OF FIJI

AT LABASA

CRIMINAL JURISDICTION

Criminal Case No. HAC 24 of 2024

(Savusavu Magistrate's Court Criminal Case No. 163 of 2023)

BETWEEN: THE STATE

AND: INOKE SEVAKATINI

Counsel: Ms. E. Thaggard for the State
Ms. S. Devi for the Accused

Date of Plea: 30th October 2023

Date of Sentence: 8th March 2024

SENTENCE

1. Inoke Sevakatini, was initially produced in the Savusavu Magistrate's Court on the 2nd of May 2023 facing the following charge: -

CHARGE

(COMPLAINT BY A PUBLIC OFFICER)

Statement of Offence

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

Particulars of Offence

INOKE SEVAKATINI on the 1st day of May, 2023 at Devodara settlement, Savusavu in the Northern Division, without lawful authority, cultivated 238 green plants of Indian Hemp with the height ranging from 10cm to 148cm, weighing a total of 283 grams of an illicit drug botanically known as Cannabis Sativa.

2. He was produced in Savusavu Magistrate's Court on the 2nd of May 2023. Initially he was advised of the right to counsel and he waived his right to counsel
3. Even though he waived his right to counsel, the Court nevertheless adjourned the proceedings 5 times from 16th May to 27th June 2023, when the Accused appeared with Legal Aid counsel. There is no explanation in the records for the Court's insistence that he get legal representation.
4. The proceedings were then adjourned as the Court directed that the Accused be psychiatrically evaluated to evaluate whether he was ready to take the plea. After a few further adjournments, the psychiatric evaluation report was received confirming that he was ready to take his plea.

The Psychiatric Evaluation

5. In the report dated 15th August 2023, tendered after the psychiatric evaluation, Dr. Sheetal Singh made the following findings and/or conclusions: -
 - (a) Mr. Sevakatini has a history of mental illness, schizophrenia, and non-adherence to his oral medicine.
 - (b) Mr. Sevakatini was aware of his actions at the time of the incident.
 - (c) Mr. Sevakatini is fit to plead.
6. After 5 further adjournments, on the 30th of October 2023 Inoke Sevakatini entered a guilty plea and he also confirmed the Summary of the Facts as outlined to him
7. He confirmed that he was pleading guilty of his own free will, free from any coercion, compulsion or incentive to plead guilty
8. The summary of the facts, which he accepts, are as follows: -
 - i. On the 1st of May 2023, at about 10:29 am A/Cpl 5410 Nimilote led a team of police officers comprising PC 7280 Epeli Lomavere and PC 7129 Sakaraia to Devodara Settlement. They had proceeded there upon receiving information

that the Accused was cultivating illicit drugs. At the raid, the team escorted the Accused, the owner of the land where the illicit drugs were cultivated.

- ii. The team arrived at the farm and the Accused showed them the place where the drugs were cultivated and he confirmed that the farm was his. The team uprooted 238 green plants believed to be marijuana ranging in height from 10 cm to 148 cm. The team then escorted the seized green plants and the Accused to Savusavu Police Station.
 - iii. The green plants were sent for analysis and was confirmed to be Indian Hemp botanically known as Cannabis Sativa weighing 283 grams.
 - iv. The Accused was interviewed under caution, and he admitted the allegation.
 - v. Inoke Sevakatini was then charged for one count of Unlawful Cultivation of Illicit Drugs contrary to section 5 (a) of the Illicit Drugs Control Act and he was then produced in the Savusavu Magistrate's Court on the 2nd of May 2023.
9. The Accused admitted the Summary of Facts outlined to him and he was convicted accordingly. His list of previous convictions was put to him and he confirmed 8 current convictions from 2016.
 10. Counsel for the Accused the sought time to prepare the plea in mitigation and the matter was then adjourned for 9 more times for various reasons, including the non-production of the Accused, counsel seeking more time to file the mitigation submissions.
 11. It was not until the 6th of February 2024 that the Court, on the application of the prosecution, ordered that the case be sent to the High Court for sentencing pursuant to section 190 of the Criminal Procedure Act 2009. This was due to the quantity of plants seized.
 12. The matter was then called in the High Court on the 16th of February 2024 and counsel advised that they would rely on the mitigation submissions filed in the Court below.

The Plea in Mitigation

- i. Inoke Sevakatini is 44 years of age, single and he is a farmer earning \$200 per fortnight.
 - ii. He is a school dropout and he was educated up to Form 4 level.
 - iii. He has a history of mental illness with a diagnosis of schizophrenia and is a patient at St Giles Hospital.
 - iv. He has entered an early guilty plea thereby saving the Court's time as well as tax payer's money from the expenses for a full hearing.
 - v. He had fully cooperated with the Police culminating in his guilty plea in Court.
 - vi. Although he has previous convictions, this is his first conviction for a drug offence.
 - vii. He is remorseful and seeks forgiveness from the Court for his actions. He also promises not to reoffend.
 - viii. He has been remanded since 2nd May 2023 and this period should be taken into account in his sentence.
 - ix. He has a history of mental illness
13. The State advised that they would rely on the authority of Jone Seru -v- The State Criminal Appeal No. AAU 115 of 2017 (25th May 2023) and left the appropriate sentence to the Court's discretion.
14. The matter is therefore adjourned for sentencing.

Analysis

15. The State submits the case of Jone Seru -v- The State Criminal Appeal No. AAU 115 of 2017 (25th May 2023) where the Court of Appeal has set out guideline tariff for the offence of Unlawful Cultivation of Illicit Drugs.
16. This Court of Appeal decision was arrived at because of the disparity in sentences meted out by different Courts throughout the years and the need for consistency in sentencing for drug cultivation offences.

17. The Court of Appeal formulated the following sentencing guideline for cultivating illicit drugs: -

A. Culpability – demonstrated by the offender’s role in the offending – (leading role, significant role, or lesser role) and more particularly explained as follows:-

Leading Role

- Owner, organiser, initiator or principal party in the venture. Involved in setting up of the operation, for example obtaining the lands, premises, workers and equipment with which to carry out the cultivation. May have one or more such ventures.
- Directing or organizing production/cultivation on a commercial scale.
- Substantial links to, and influence on others in a chain
- Close links to original source
- Expectation of substantial financial or other advantage
- Uses business as cover.
- Abuses a position of trust or responsibility.

Significant Role

- Play a greater or dominant part. Running the operation
- Operational or management function within a chain. May make arrangements for the plants to be brought in, and the crop to be distributed. They may help to run more than one operation and be involved in making payments, such as rental payments, albeit again on instructions from those running the operation.
- Involves others in the operation whether by pressure, influence, intimidation or reward.
- Expectation of significant financial or other advantage (save where this advantage is limited to meeting the offender’s own habit) whether or not operating alone.
- Some awareness and understanding of scale of operation.

Lesser Role

- Secondary party, sometimes as “gardeners” tending the plants and carrying out what might be described as the ordinary tasks involved in growing and harvesting the cannabis. Simply be doing their tasks on the instructions of above in the hierarchy. May get paid for the work or subsistence.
- Performs a limited function under direction.
- Engaged by pressure, coercion, intimidation, grooming and/or control.
- Involvement through naivety, immaturity, or exploitation
- No influence on those above in a chain
- Very little if any, awareness or understanding of the scale of the operation.
- If own operation, solely for own use (considering reasonableness of account in all the circumstances)
- Expectation of limited if any, financial advantage, (including meeting the offender’s own habit.)

B. Harm

The second sentencing consideration is to assess the harm, output or potential output as determined by the amount of plants/scale of operation. The Court should determine the offence category from among the 4 categories given below: -

- Category 1 – Large scale cultivation capable of producing industrial quantities for commercial use with a considerable degree of sophistication and organisation. Large scale commercial quantities. Elaborate projects designed to last over an extensive period of time. High degree of sophistication and organisation. 100 or more plants.
- Category 2 – Medium scale cultivation capable of producing significant quantities for commercial use i.e., with the object of deriving profits. Commercial quantities. Over 50 but less than 100 plants.
- Category 3 – Small scale cultivation for profits capable of producing quantities for commercial use. 10 to 50 plants (with an assumed yield of 55 grams per plant).

- Category 4 – Cultivation of small number of plants for personal use without sale to another party occurring or being intended. Less than 10 plants (with an assumed yield of 55 grams per plant).

18. The Court of Appeal then sets out the sentencing table for the offence of cultivation of illicit drugs as follows: -

Culpability/Harm	Leading Role	Significant Role	Lesser role
Category 1	Starting Point 18 years custody <i>Category Range</i> 12 – 16 years custody	Starting Point 14 years custody <i>Category Range</i> 12 – 16 years custody	Starting Point 9 years custody <i>Category Range</i> 7 – 12 years custody
Category 2	Starting Point 14 years custody <i>Category Range</i> 12 – 16 years custody	Starting Point 14 years custody <i>Category Range</i> 12 – 16 years custody	Starting Point 5 years custody <i>Category Range</i> 3 – 7 years custody
Category 3	Starting Point 9 years custody <i>Category Range</i> 7 – 12 years custody	Starting Point 5 years custody <i>Category Range</i> 3 – 7 years custody	Starting Point 18 months custody <i>Category Range</i> 1 – 3 years custody
Category 4	Starting Point 5 years custody <i>Category Range</i> 3 – 7 years custody	Starting Point 18 months custody <i>Category Range</i> 1 – 3 years custody	Starting Point <i>Category Range</i> Non-custodial–suspended sentence

19. The Court of Appeal also set out the aggravating and mitigating features (not an exhaustive list.)

Statutory Aggravating Factors: -

- Previous convictions having regard to
 - (a) Nature of the offence to which conviction relates and relevance to the current offence; and
 - (b) Time elapsed since conviction (see Naureure vs State [2022] FJCA 149; AAU 151 of 2020 (12 December 2022) paragraphs 32 -39 for a detailed discussion on this aspect.)
- Offence committed on bail.

Other aggravating factors include: -

- Exploitation of children and/or vulnerable persons to assist in drug related activity.
- Exercising control over the home of another person for drug related activity.
- Nature of any likely supply.
- Level of any profit element.
- Use of premises accompanied by unlawful access to electricity/other utility supply of others, where not charged separately.
- Ongoing/large scale operation as evidenced by presence and nature of specialist equipment.
- Exposure of drug user to the risk of serious harm over and above that expected by the user, for example through the method of production/cultivation.
- Exposure of third parties to the risk of serious harm, for example, through the location of the drug related activity.
- Attempts to conceal or dispose of evidence where not charged separately.
- Presence of others, especially children and/or non-users.
- Presence of weapons, where not charged separately.
- Use of violence (where not charged as separate offence or taken into account at step one.)
- Failure to comply with current court orders.
- Offence committed on license or post sentence supervision.
- Offending took place in prison (unless already taken into consideration at step 1).
- Established evidence of community impact.
- Use of sophisticated methods or technologies in order to avoid or impede detection.
- Use of indoor growing system (hydroponic method) to increase growth and harvesting period and THC in the plants.
- Growing for personal use but supplying to others on a non-commercial basis.
- Period over which the offending has continued.
- Estimated value of the crop, if available.
- Assumed yield or the weight of the dried cannabis.
- Supply to others on a non-commercial basis in Category 4.

Factors reducing seriousness or reflecting personal mitigation.

- Involvement due to pressure, intimidation or coercion falling short of duress (as opposed to being a willing party), except where already taken into account at step one. Acting under duress or undue influence.
- Isolated incident.

- No previous convictions or no relevant or recent convictions.
- Offender’s vulnerability was exploited.
- Remorse.
- Good character and/or exemplary conduct.
- Determination and/or demonstration of steps having been taken to address addiction (whose offending sits at the lower end of the scale in terms of seriousness) or offending behaviour.
- Serious medical conditions requiring urgent, intensive, or long-term treatment.
- Age and/or lack of maturity.
- Mental disorder, impairment, or diminished responsibility short of insanity or learning disability.
- Personal circumstances, sole or primary carer for dependent relatives only in relation to Category 4
- Assumed yield or the weight of dried cannabis.
- Sales are infrequent and of limited extent in Category 3.

Sentencing Remarks

20. Inoke Sevakatini has pleaded guilty to the offence of Unlawful Cultivation of Illicit Drugs contrary to section 5 (a) of the Illicit Drugs Control Act 2004. He was convicted on his guilty plea on the 30th of October 2023 and he has been awaiting sentence in remand since that date, a period of 5 months.

21. This is unacceptable, and as an Accused he enjoys a constitutional right to “have the trial begin and conclude without unreasonable delay” (section 14 (2) (g) of the Constitution of Fiji 2013).

22. The Court finds that the delay caused by the referral for psychiatric evaluation was reasonable in the circumstances, however the other causes for the delay lay with the Court and with the relevant authorities (the Police and the Corrections Authorities) and could have been avoided.

23. All the relevant authorities ought to have been aware of the quantity of the illicit drugs and also of the recent Court of Appeal decision of Jone Seru -v- The State Criminal Appeal No. AAU 115 of 2017 (25th May 2023). The Court should have considered invoking section 190 of the Criminal Procedure Act much earlier in these proceedings.

24. Inoke Sevakatini cultivated 238 plants with a weight of 283 grams ranging in height from 10 cm to 148 cm. This places him in Category 1 of drug offenders, and from the facts, I am satisfied that he played a lesser role, and from the available evidence he can be said to be a “gardener” with no evidence that he played a greater role or that he was engaged in commercial drug cultivation. The tariff ranges from 7 years to 12 years imprisonment.
25. Inoke Sevakatini is not a first offender although this is his first drug offence, he will not get credit for his guilty plea as would be the case for a person with no previous convictions.
26. The psychiatric evaluation states that he was suffering from a mental illness however at the time of the offending he was aware of what he was doing therefore he is culpable for his actions in cultivating the illicit drugs.
27. He has sought the Court’s forgiveness, and readily admitted the offending to the Police at the scene and his cooperation led to the recovery of the illicit drugs from the scene, culminating in his guilty plea at the earliest possible opportunity.
28. In preparing the sentence, the Court is mindful of the guidelines for sentencing as set out at section 4 of the Sentencing and Penalties Act 2009.
29. For the offending on the Information before the Court, the Court is required to first of all denounce the offending as these types of cultivation offences are on the rise, especially in Vanua Levu.
30. This sentence is also aimed at deterring likeminded offenders (general deterrence) as well as the Accused personally from repeating this offending in the future (specific deterrence.)
31. The Court is also mindful of the need to encourage his personal rehabilitation and his cooperation with the police and early guilty plea is a positive indicator of his willingness to rehabilitate himself.

32. He has pleaded guilty and he will get credit for the same even though he will not get as much credit as if he were a first offender.
33. For this matter he has been remanded since 30th October 2023 therefore the 5 months spent in remand will be deducted for time already served,
34. Inoke Sevakatini, in sentencing you I adopt a starting point of 9 years imprisonment. There are no special aggravating factors from the facts of the offending.
35. You appear to be the sole cultivator and you cooperated with the authorities culminating in your guilty plea.
36. For the guilty plea your sentence is reduced by 2 years.
37. After making the above adjustments, the Court arrives at an interim sentence of 7 years imprisonment.
38. For this case you have been remanded for 5 months and this period will be deducted as time already served leaving you with the final sentence 6 years 7 months imprisonment.
39. As this is a sentence above 2 years, this Court is required to impose a non- parole period, pursuant to section 18 (1) of the Sentencing and Penalties Act 2009.
40. After considering all of the circumstances of the offending and the personal circumstances of the offender, Inoke Sevakatini, I find that it is appropriate to impose a non-parole period of 5 years to be served.

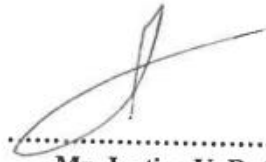
This is your sentence

1. **Inoke Sevakatini for the offence of Unlawful Cultivation of Illicit Drugs you are sentenced to 6 years 7 months' imprisonment with a non-parole period of 5 years imprisonment.**

2. I further direct that any drugs in police custody are to be destroyed at the end of the appeal period.

30 days to appeal.




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Mr. Justice U. Ratuveli
Acting Puisne Judge

Solicitors:

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