

IN THE HIGH COURT OF FIJI
AT LABASA
CRIMINAL JURISDICTION

Criminal Case No.: HAC 52 of 2024

STATE

V

APISAI YATEVATU

Counsel : Mr. T. Tuenuku for the State
: Ms. S. Devi for the Accused

Date of Hearing : 7 March 2025

Date of Sentence : 20 March 2025

SENTENCE

1. On 3 March 2025, Mr Yatevatu (“the offender”) pleaded guilty to a count of Unlawful Possession of Illicit Drugs, contrary section 5(a) of the Illicit Drugs Control Act 2004.
2. On the same date, the offender was read and explained the Summary of Facts, which he understood and admitted.
3. The material facts can be shortly stated. On 9 April 2024, the offender approached his cousin and invited him to accompany him to Savusavu to collect some Yaqona. They left Suva at 10am on 10 April 2024, and reached Savusavu at 3am on 11 April 2024.

4. On 12 April 2024, the offender told his cousin to accompany him to uproot Yaqona from his farm. They took a bus and alighted at a shed near the road. The offender told his cousin to wait for him whilst he went to the farm.
5. After about two hours, the offender returned with a black bag. After fifteen minutes, a white vehicle came. The offender got in the front passenger seat and his cousin sat behind the driver. The offender placed the black bag beside his cousin.
6. As they approached the Tacilevu village junction, their vehicle was stopped by police officers. A search was conducted, and inside the black bag were found farm tools and loose green leaves believed to be marijuana. The offender, his cousin and the driver were arrested and taken to Savusavu Police Station.
7. Under caution, the offender said: *“I was sent to pick it, but unfortunately it was caught red-handed on me, so it was my fault.”*
8. The Forensic Chemistry Laboratory positively identified the plant materials and dried leaves as cannabis sativa, with a total weight of 6,976.2 grams.
9. I am satisfied that the offender’s plea was informed, voluntary and unequivocal. The Summary of Facts satisfies all the elements of the offence charged. I find him guilty and convict him accordingly.
10. I have read the prosecution and defence written submissions. I have also heard oral submissions, and have taken all the matters advanced by the parties into consideration.
11. The maximum penalty for the offence of possession of illicit drugs is life imprisonment. In October last year, the Supreme Court delivered a revised guideline judgment for cannabis offences contrary to section 5 of the Illicit Drugs Control Act. The Supreme Court set out five categories based on the weight of cannabis involved, and assigned a tariff to each category.

12. The weight of cannabis you were in possession of falls within category 3. The tariff is 4 to 8 years' imprisonment, with discretion to the sentencing court to impose an appropriate sentence having regard to all the circumstances of the case.
13. In my judgment, the appropriate starting point for your sentence, Mr. Yatevatu, is 4 years' imprisonment.
14. The prosecution has advanced two factors which they say make your offending more serious. Your offending was clearly planned. You also involved your innocent cousin, resulting in his arrest.
15. Defence counsel has advanced a number of mitigating factors.
16. You are 24 years old and married with two children. Your second child was born during your remand in custody. You were the sole breadwinner earning around \$200 per week as a labourer. You have no previous convictions.
17. Ms. Devi also tells me that you seek forgiveness and promise not to re-offend. She says that you have good prospects of rehabilitation given your youth.
18. Balancing these factors, I reduce your sentence to 3 years' imprisonment.
19. An offender's best mitigation is almost invariably an early plea of guilty. Sentencing courts generally give substantial credit for a guilty plea entered at the first opportunity. This is because an acceptance of guilt saves victims and witnesses from having to testify, and is in the public interest in that it saves public time and money on trials.
20. A guilty plea produces greater benefits the earlier the plea is indicated. It therefore makes good sense from a legal policy perspective to incentivise those who are guilty to indicate a guilty plea as early as possible.
21. In most common law jurisdictions there is a fairly structured approach to the level of reduction of sentence for guilty pleas entered at different stages of the court process. The position in Fiji is less structured, and correspondingly less predictable. In my view, it would better serve the public interest for sentencing

courts here to consistently adopt a more structured approach to the appropriate discount for plea. It seems to me that this would better incentivise those who are guilty to indicate a guilty plea as early as possible.

22. There is *dicta* in decided local cases that credit for plea will vary depending on a judicial assessment as to whether the plea is reflective of an offender's true remorse. To my mind, this approach is problematic because it elides the utilitarian value of the policy of incentivising those who are guilty to plead guilty as early as possible with the subjective assessment of an offender's remorse. Whilst I, of course, accept that an early guilty plea *may* reflect genuine remorse, I prefer to regard genuine remorse as a quite separate matter of personal mitigation.
23. Section 4(2)(f) Sentencing and Penalties Act provides that I must have regard to whether you pleaded guilty and the stage in the proceedings at which you did so or indicated an intention to do so. This section does not make my consideration of the stage at which you pleaded guilty conditional upon the view I may take about whether your guilty plea reflects your remorse for your offending.
24. For the same reasons that I consider that remorse should be left out of the equation when a sentencing court considers the appropriate reduction for a guilty plea, the strength of the prosecution evidence should not be taken into account when determining the level of reduction for plea. The benefits to the state alluded to above abide irrespective of the perceived strength of the prosecution case.
25. Having made those general observations, had you pleaded guilty to this offence at the earliest opportunity, Mr Yatevatu, I would have reduced your sentence to 2 years' imprisonment. In other words, I would have given you a full one-third discount. I would have given you this discount even though, on your own admission, you were caught red-handed.
26. Unfortunately, however, since you delayed accepting guilt until very late in the day, in my judgement, the appropriate reduction I can justify is around 10%. It

is appropriate that I give you some reduction because, even though your plea was entered late, you have nevertheless saved public time and money.

27. In the result, therefore, I sentence you to 2 years' 8 months' imprisonment.
28. In my view, this is the shortest sentence I can impose commensurate with the seriousness of your offending.
29. In light of the current epidemic of illicit drugs offending in the nation, only an immediate custodial sentence is appropriate.
30. You have been in custody pending the disposal of this matter since your arrest on 12 April 2024, totalling about 11 months (which I round up to 1 year), which is to be regarded as a period of imprisonment that you have already served.
31. Accordingly, the sentence I impose on you today, Mr Yatevatu, is one of 1 year 8 months' imprisonment.
32. You may appeal to the Court of Appeal within 30 days.



Hon. Mr. Justice Burney

At Labasa

20 March 2025

Solicitors

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