

**IN THE HIGH COURT OF FIJI**

**AT SUVA**

**[APPELLATE JURISDICTION]**

**CRIMINAL APPEAL NO. HAA 007 OF 2025**

**BETWEEN** : **HERBERT WISE**

**AND** : **STATE**

**Date of Judgment :** **9 May 2025**

### **JUDGMENT**

(Summary Dismissal of Appeal)

- [1] On 28 January 2025, Herbert Wise (the Appellant) was sentenced to eight (8) months' imprisonment after pleading guilty to a charge of Unlawful Possession of 4.2 grams of Marijuana in the Magistrates' Court at Navua.
- [2] On 10 February 2025, while serving his sentence, he filed a Petition to appeal his sentence.
- [3] The Office of the Chief Registrar received that Petition on 28 February 2025. The appeal was filed on time.
- [4] The principal complaint is against the severity of the sentence.
- [5] On 2 April 2025, the High Court received a certified copy of the Magistrates' Court records in this case. These records are important when assessing the summary dismissal of an appeal pursuant to section 251 of the Criminal Procedure Act.

[6] Section 251 of the Criminal Procedure Act states:

**251 – (1)** *When the High Court has received the petition of appeal and the record of proceedings, a judge shall consider the petition.*

**(2)** *Where an appeal is brought on the grounds that: (a) the decision is unreasonable; or (b) the decision cannot be supported having regard to the evidence; or (c) the sentence is excessive;*

*and it appears to the judge that the evidence is sufficient to support the conviction and that there is no material in the circumstances of the case which could raise a reasonable doubt about whether the conviction was correct or lead to the opinion that the sentence ought to be reduced, the appeal may be summarily dismissed by an order certifying that the judge has perused the record and is satisfied that the appeal has been lodged without any sufficient grounds for complaint.*

**(3)** *Whenever an appeal is summarily dismissed, notice of the dismissal shall be given by the Chief Registrar of the High Court to the Appellant or the Appellant's lawyer.*

[7] I have reviewed and considered the court records. The learned Magistrate provided written reasons for the sentence imposed on the Appellant. She carefully considered the facts of the case. On 13 December 2024, two police officers were patrolling Navua Town when they noticed the Appellant behaving suspiciously. They saw him concealing something inside his trousers. He was known to the police. They arrested him and escorted him to Navua Police Station for a strip search. They found dried leaves wrapped in plastic and concealed in the Appellant's underwear. The leaves were tested and confirmed to be marijuana.

[8] The Appellant pleaded guilty to the charge at the first opportunity. At the time, he was 55 years old and unemployed. He had a total of 44 previous convictions since 2005, including active convictions for Possession of Illicit Drugs.

- [9] The learned Magistrate, after considering the maximum sentence of life imprisonment for possession of an illicit drug, set 12 months as a starting point and then reduced it by four months to reflect the early guilty plea and one month of remand. She did not find any aggravating factors. She determined that the Appellant was a recidivist and a menace to the community. She considered a suspension of the sentence but decided against it, stating that a custodial sentence was warranted to deter the Appellant from reoffending. She ordered that the Appellant "must undergo rehabilitation programmes whilst at the Correction Facility."
- [10] After reviewing the Magistrates' Court records, I am satisfied that there is no material in the circumstances of this case that could lead to the opinion that the sentence ought to be reduced.
- [11] The appeal is summarily dismissed pursuant to section 251 of the Criminal Procedure Act.
- [12] The Registry is to serve the Appellant and the Office of the Director of Public Prosecutions with a copy of this judgment.



Hon. Mr Justice Daniel Goundar

**Solicitors:**

Appellant in Person

Office of the Director of Public Prosecutions for the State