

IN THE MAGISTRATES' COURT OF FIJI

AT SUVA

Criminal Case No: 662/2025

STATE V SHAZRAN ABDUL LATEEF

For the Prosecution : Mr.Samsoni & Ms.Bibi(ODPP)
For the accused :Mr.J.Cakau(VOSAROGO LAWYERS)
Date of Judgment: 03 February 2026
Sentencing Submission : 17 February 2026
Mitigation submission: 20 February 2026
Supplementary mitigation: 23 February 2026
Date of Sentence: 23 February 2026

SENTENCE

Introduction

1. SHAZRAN ABDUL LATEEF, you are charged with two counts of Possession of Illicit Drugs, contrary to section 5(a) of the Illicit Drugs Control Act.¹
2. You pleaded not guilty to these charges, and the matter accordingly proceeded to hearing.
3. The Prosecution called two witnesses and tendered the drugs as exhibits.
4. For the Defence, you elected to remain silent after this court gave you the rights. ²
5. After considering all the available evidence, this Court, on 03 February 2026, found you guilty and convicted you on both counts.
6. The evidence established that on 09 May 2019, at Suva, you were in possession of 9.5 grams of methamphetamine and 3.5 grams of cannabis. Together with one Asenaca, you went to a room at the Wasawasa Hotel where; while heating a pipe to consume the drugs, police raided the premises and arrested you.

¹ No. 09 of 2004

² S 179, Criminal Procedure Act , No 43 of2009.

7. The Court permitted the Prosecution to file sentencing submissions and the Defence to file mitigation submissions.
8. Both parties have since filed their respective submissions, for which the Court is grateful.

Discharge without a conviction

9. In supplementary mitigation submission, your counsel is seeking discharge without a conviction to allow you to retain your practice certificate as well as to attend treatments in overseas.

10. It has been held that non-conviction would be given only for morally blameless people or technical breaches.³

11. In **State v Batiratu**⁴ his Lordship Chief Justice Gates (as he then was) introduced the following guidelines when considering discharge without a conviction

(a) The offender is morally blameless.

(b) Whether only a technical breach in the law has occurred.

(c) Whether the offence is of a trivial or minor nature.

(d) Whether the public interest in the enforcement and effectiveness of the legislation is such that escape from penalty is not consistent with that interest.

(e) Whether circumstances exist in which it is inappropriate to record a conviction, or merely to impose nominal punishment.

(f) Are there any other extenuating or exceptional circumstances, a rare situation, justifying a court showing mercy to an offender.

12. Further section 16(1) of the Sentencing and Penalties Act states

“1) In exercising its discretion whether or not to record a conviction, a court shall have regard to all the circumstances of the case, including —

(a) the nature of the offence;

(b) the character and past history of the offender; and

³ State v Nayacalagilagi (2009) FJHC 73; HAC165.2007 (17th March 2009).

⁴ [2012] FJHC 864; HAR001.2012 (13 February 2012).

(c) the impact of a conviction on the offender’s economic or social well-being, and on his or her employment prospects.”

13. The offences you have committed are serious and carrying heavy punishments. You are not a morally blameless person, and these are not mere technical breaches. Your prior good character also carries little weight as a mitigating factor, as will be demonstrated later in this sentence.

14. As provided under Article 26 of the Constitution of Fiji, every person is equal before the law. Accordingly, I do not consider your status as a lawyer to entitle you to different treatment from that of any other person like a farmer from Naitasiri who appears before the court for a similar offence.

15. Therefore, I find no compelling grounds to grant the application by your counsel. Accordingly, I hereby convict you both counts for this sentence.

Law and Sentencing Tariff

16. The maximum penalty for Possession of Drugs under the IDCA is life imprisonment/ \$100,000.00 fine.

17. In **Abourizk v State**⁵ the Court of Appeal of Fiji set down the tariffs for all hard/major drugs (such as Cocaine, Heroin, and Methamphetamine etc.)

Category 01: – Up to 05g – 02 ½ years to 04 ½ years’ imprisonment.

Category 02: – More than 05g up to 250g - 03 ½ years to 10 years’ imprisonment.

Category 03:– More than 250g up to 500g - 09 years to 16 years’ imprisonment.

Category 04:– More than 500g up to 01kg – 15 years to 22 years’ imprisonment.

Category 05 – More than 01kg - 20 years to life imprisonment

18. The Methamphetamine that was in your possession is 9.5 grams and therefore you fall in to the second category with sentence range of **03 ½ years to 10 years’ imprisonment.**

19. In mitigation, your counsel submitted that the sentencing guidelines should not be applicable to you. Counsel argued that, at the time these offences were committed, the guidelines were not yet in operation and therefore cannot be applied retrospectively. However, counsel failed to provide any case authorities in support of this ground.

20. As established during the hearing, these offences were committed on 09 May 2019. The Court of Appeal subsequently pronounced the Abourizk decision on 07 June 2019.

21. In **Narayan v State**⁶ the majority view was expressed in favor of retrospective operation of sentencing tariff.

‘[80] The commonly accepted principle is that one cannot be punished for something which was not a criminal offence when he committed it. However, could the new tariff set by the Supreme Court, if applied to the instant case, amount to a more severe

⁵ [2019] FJCA 98; AAU0054.2016 (7 June 2019).

⁶ [\[2018\] FJCA 200](#); AAU107.2016 (29 November 2018)

punishment, than the accused could have been punished at the time of the offence? Would the new tariff seek to punish the Appellant for something that was not criminal at the time of its commission? In my judgment the answer to both is 'No'.

[81] I am also of the view that the tariff of a sentence does not amount to a substantive law. Tariff is the normal range of sentences imposed by court on any given offence and it is considered to be part of the common law and not substantive law. It may also be said that tariff of a sentence helps to maintain uniformity of sentencing across given offences. The procedure for determining the appropriate sentence include taking an appropriate starting point and having regard to the aggravating and mitigating circumstances on the merits of each case. Any change effected to an existing tariff for a given offence therefore could be retrospective in its operation.....'.

22. In **Chand v State**⁷ the State strongly argued in the Court of Appeal that an accused should be sentenced according to the sentencing tariff as at the time of sentencing. His Lordship Justice Premathilaka who wrote the majority judgment stated:

'[66] A sentencing tariff set by common law, which is not static, does not amount to a penalty prescribed by a statute but a mere procedural arrangement. Therefore, even section 14(2) (n) of the Constitution which states 'that every person charged with an offence has the right to the benefit of the least severe of the prescribed punishments if the prescribed punishment for the offence has been changed between the article contemplates a change in the prescribed punishment. As pointed out already the punishment for rape has not changed. If the Appellant's argument is correct in the sense that tariff set by court has the force of a statutory provision the sentencing judges will never be able to go outside the tariff whatever the circumstances of the case may be.

'[67] Setting a tariff is more to do with procedural law rather than substantive law and an exception to the common law rule that a statute ought not to be given a retrospective effect. In Singh v State [2004] FJCA 27; AAU0009.2004 (16 July 2004), the Court of Appeal held

"...It inevitably follows from these conclusions that the new section 220 became applicable to the Appellant when the Amendment Act came into force on 13 October 2003. In his case it had a retrospective effect. Plainly the new section 220 is a procedural provision. It prescribes the manner in which the trial of a past offence may be conducted. It is unquestionably, in our view, a provision which is an exception to the common law rule that a statute ought not be given a retrospective effect."

⁷ [2019] FJCA 192; AAU0033.2015 (3 October 2019)

[73] Therefore, the correct legal position is that the offender must be sentenced in accordance with the sentencing regime applicable at the date of sentence. The court must therefore have regard to the statutory purposes of sentencing, and to current sentencing practice which includes the tariff set for a particular offence. The sentence that could be passed is limited to the maximum sentence available at the time of the commission of the offence, unless the maximum had been reduced, when the lower maximum would be applicable'

23. Therefore, I find that although the accused committed these offences prior to the pronouncement of the **Abourizk guidelines**, he must nevertheless be sentenced in accordance with them. This principle applies equally to the cannabis offence also, and he will accordingly be sentenced under the new tariff for cannabis.
24. The Supreme Court of Fiji has set out the new tariff in the case of **Arisi Kaitani vs State**⁸ where the Supreme Court has identified the following categories of **drug** offenders: -

“(i) Category 1: (0 gram to 1,000 grams (1 kilogram))

Possession/cultivation/offending verbs of cannabis sativa. Like **Sulua v State** (supra), a non-custodial sentence is to be given in this category. With the recent discovery of 4 tons of methamphetamine in Nadi earlier this year, there is no need for the State to waste its resources on this category. The cases can be disposed by fines, community services, counselling, discharge with a strong warning etc. Only in the worst cases, should a suspended prison sentence or a short sharp prison sentence be considered.

(ii) Category 2: (1 kilogram to 5 kilograms)

Possession/cultivation/offending verbs of cannabis sativa. Tariff should be a sentence between 1 to 4 years imprisonment, with liberty to the trial Magistrate/Judge to sentence at what level of the tariff, depending on the mitigating and aggravating factors.

(iii) Category 3: (5 kilograms to 10 kilograms)

Possession/cultivation/offending verbs of cannabis sativa. Tariff should be a sentence between 4 to 8 years imprisonment, with liberty to the trial Magistrate/Judge to sentence at what level of the tariff, depending on the mitigating and aggravating factors.

(iv) Category 4: (10 kilograms to 150 kilograms)

⁸ [2024] FJSC 50; CAV 011of 2023 (29 October 2024).

Possession/cultivation/offending verbs of cannabis sativa. Tariff should be a sentence between 8 years to 16 years imprisonment, with liberty to the trial Magistrate/Judge to sentence at what level of the tariff, depending on the mitigating and aggravating factors.

(v) **Category 5: (150 kilogram and above)**

Possession/cultivation/offending verbs of cannabis sativa. Tariff should be life imprisonment, with liberty to the trial judge to fix a minimum term, depending on the aggravating and mitigating factors, from which to apply for a pardon from His Excellency the President.”

25. The Cannabis that was in your possession is 33.5 grams and you fall in to the first category.

26. In **Laisiasa Koroivuki v the State**⁹the court of Appeal discussed the guiding principles for determining the starting point in sentencing and observed :

"In selecting a starting point, the court must have regard to an objective seriousness of the offence. No reference should be made to the mitigating and aggravating factors at this time. As a matter of good practice, the starting point should be picked from the lower or middle range of the tariff. After adjusting for the mitigating and aggravating factors, the final term should fall within the tariff. If the final term falls either below or higher than the tariff, then the sentencing court should provide reasons why the sentence is outside the range".

27. The offenses for which you are convicted are of a similar nature and were committed as part of the same transaction. Therefore, I will impose an aggregate term of imprisonment.¹⁰

Starting point

28. Having considered the above judicial precedents and the objective seriousness of the offences, I select forty-eight (48) months as the appropriate starting point.

⁹ [2013] FJCA 15; AAU0018.2010 (5 March 2013).

¹⁰ S17, Sentencing and Penalties Act, No 42 of 2009.

29. I have set this starting point slightly higher than the usual tariff of forty-two (42) months, given that the quantity of methamphetamine in your possession was 9.5 grams, and in addition, you were also found with cannabis

Aggravating Factors

30. In sentencing submission, the State requested the following to be considered as aggravating factors:

- a. There is increase number of similar cases in the country and t is slowly becoming a hub to drug offence.**
- b. The significant number of drugs.**

31. I do not consider the prevalence of this type of offence, while concerning, to amount to an aggravating factor. To accept it as such would be to punish the accused for the conduct of others, and therefore I disregard it.

32. Furthermore, although the quantity of drugs in possession was substantial, I have already taken that into account in selecting the starting point. To consider it again at this stage would amount to double counting.

33. Accordingly, I find that there are no aggravating factors in this case.

Mitigating Factors

34. In written mitigation, your counsel submitted the following grounds:

- A. You are presently 65 years old;**
- B. First offender;**
- C. Former Managing partner of Lateef & Lateef and working as a sole practitioner;**
- D. You are suffering from various illnesses;**
- E. This case is pending in the court from 2019.**

35. Although past good behaviour may generally be considered a mitigating factor in criminal sentencing , I do not consider it to carry significant weight in your case. As a legal practitioner, you are expected to maintain good character as an inherent requirement of your profession.

36. You have tendered a medical report outlining your health conditions. Taking this into account, together with your age, I deduct four (4) months from the starting point, resulting in a sentence of forty-four (44) months' imprisonment.

37. Your counsel has further urged this Court to consider the delay in concluding of this case as a mitigating factor.

38. Article 14 (2) j of 2013 Fiji Constitution states the accused has right to have the trial begin and conclude without unreasonable delay.

39. ARCHBOLD 2017 at 5-174 states:

“In case involving substantial delay, it is the duty of a sentencing court, whether or not the matter has been raised on behalf of the defendant, to examine the possibility of a breach of the right to a fair trial within a reasonable time, in order to decide whether any such breach should have an effect on the disposal of the case, in deciding whether any delay constitutes a breach of the “reasonable time” guarantee, the three matters that fall to be considered are (i) the complexity of the case, (ii) the conduct of the appellant and iii) the conduct of the administrative and judicial authorities; and these factors are also relevant the question whether, when a breach has been established, there should be any adjustment of the sentence that would have been passed if there had been no delay Rummun v. State of Mauritius [2013] 1 W.L.R. 598, PC”

40. Now I now set out the chronology of adjournments in this case.

- a) **9-11/11/2020 1st trial date; however, trial vacated on defence’s application and 2nd trial date of 1-3/11/2021 fixed.**
- b) **1-3/11/2021 2nd trial date – Applicant absent and Court issued Warrant and trial vacated.**
- c) **2/12/2021 Applicant voluntarily presented himself to police and produced in Court on 2/12/2021 for cancellation of Bench Warrant and case re-fixed for 3rd trail date on 8-10/06/2022.**
- d) **10/06/2022 3rd trail date – Police Prosecution called its first witness but after a short adjournment the application produced a sick sheet and trial adjourned to re-fix a continuation of trial for prosecution to call its remaining 3 witnesses.**
- e) **31/08/2022-02/09/2022 4th trial date – But on 01/09/2022, the applicant was absent and a Bench Warrant issued and case adjourned to 17/10/2022.**

- f) **17/10/2022** Applicant later appeared and Bench Warrant cancelled. Case then fixed for 5th trial date to commence on **06/02/2023**.
- g) **06/02/2023** 5th trial date – Applicant’s counsel Mr. Cakau applied for vacation of trial due to being engaged in the High Court, which was granted and case re-fixed for 6th trial date on **27-29/11/2023**.
- h) **27/11/2023** 6th trial date – Case called before a new Magistrate who ordered a trial de novo; case adjourned for Applicant’s counsel to make representation to the DPP’s Office regarding concerns about certain state witnesses. DPP counsel informed the Court that prosecution will continue, and 7th trial date fixed for **10/03/2025**.
- i) **10/03/2025** 7th trial date – Applicant informed the Court that his Counsel Mr. Cakau had not renewed his practising certificate, thus not able to conduct the trial as defence counsel. Court awarded \$300 cost against the Applicant to be paid to prosecution since they have been calling its witnesses and paying for the witnesses allowance, fare and accommodation; and vacated the trial date and fixed the 8th trial date for **05/04/2025** commencing at 8.00am.
- j) **05/04/2025** 8th trial date – Case called at 8.00am and only the Applicant and his counsel present without the prosecution and court on its own motion moved to dismiss the charges against the Applicant pursuant to section **171(1)(b) of the Criminal Procedures Act 2009**.

41. It is evident from the above that the hearings were adjourned primarily due to the conduct of the accused, and accordingly, he bears responsibility for the delay. Accordingly, I disregard this delay as a mitigating factor.

42. Your counsel further submitted that, in light of your addiction, the primary purpose of sentencing should be rehabilitation through a non-custodial sentence. In support of this submission, counsel cited the decision in **Ramiza Bano v State**.¹¹

43. In his appeal judgment, His Lordship Justice Aluthge described the value of not sending individuals found with small amounts of illicit drugs to correctional centers as follows.

¹¹ [2024] FJHC 749; HAA33.2024 (12 December 2024).

“There is another utility value in not sending offenders found in possession (for personal consumption) of small amounts of illicit drugs to correction facilities. In maintaining the correction centres and feeding the inmates, a large amount of taxpayer money is being spent. The Courts have expressed doubt that the correction centres in Fiji serve as rehabilitation centres. If the offenders can be rehabilitated through education and rehabilitation programmes whilst they are still in the family and the community, a win-win situation can be achieved. Further, if a lenient approach to sentencing is adopted in trivial possession cases, the offenders are encouraged to take responsibility and plead guilty at the early stages of the court process, thus saving a lot of resources.(emphasis added)”

44. However, the facts of this case are different from those in Bano. In that matter, the High Court, on appeal, suspended the sentence of an offender who had pleaded guilty and been sentenced by the Magistrates’ Court to seventeen (17) months’ imprisonment for possession of 1.407 grams of methamphetamine. The High Court took into account the offender’s pregnancy, the best interests of the unborn child, and the lengthy delay in the lower court proceedings in suspending the sentence.
45. In the present case, however, you were convicted after a full hearing, and the quantity of hard drugs found in your possession was substantial. Moreover, you contributed to the delay in these proceedings. Accordingly, I find that the decision in Bano is not relevant to your case.

Conclusion

46. It is to be noted that the accused is sentenced for possession of both hard drugs and cannabis. Although there is presently strong public sentiment for harsher penalties in such cases, the Courts are bound by the tariff laid down in *Abourizk v State*.
47. In that decision, the Court of Appeal stated that offenders found in possession of between 5 grams and 250 grams are to be sentenced within a range of three and a half (3½) years to ten (10) years’ imprisonment. Considering that the amount in the possession of the accused was only 9.5 grams, his final sentence is forty-four (44) months’ imprisonment, which falls at the lower end of the tariff.

48. SHAZRAN ABDUL LATEEF, it is unfortunate that you have destroyed your life and future because of drugs. From being the managing partner of a prestigious law firm of Fiji, you have now fallen into the position of an elderly person without much support and abandoned by family, seeking mercy from this Court. I accept that there is no evidence before me to suggest that you were engaged in commercial dealing of drugs, and that you were in possession of drugs on that day solely for personal use, consistent with your admission of addiction.
49. Even though your counsel has sought a non-custodial sentence, I am duty bound to follow the law, which prescribes a custodial sentence in this case. In conclusion, I need to emphasize that your sentence must also serve as a deterrent to others who may be inclined to experiment with hard drugs in Fiji. The message is clear: methamphetamine is highly addictive and destructive, robbing individuals of their freedom and their future.
50. SHAZRAN ABDUL LATEEF, accordingly, you are sentenced to forty-four (44) months' imprisonment for this charge, with a non-parole period of thirty (30) months. The purpose of fixing this non-parole period is to provide you with an opportunity for reform, and in light of your admission of addiction, I also direct the correctional authorities to arrange appropriate treatment programs for you.
51. Drugs to be photographed and destroyed at the end of the appeal period.
52. 28 days to appeal.

