



**IN THE MAGISTRATES COURT  
OF SOLOMON ISLANDS**

Criminal Jurisdiction

Criminal Case No: 648/2014

**REGINA**

**-v-**

**TONY HARRISON NALAPARO**

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**Sentence**

1. Mr. Nalaparo aged 17 had pleaded guilty to one count of in possession of Marijuana under section 39(2) of the Dangerous Act; CAP 98; and one count of Resisting Arrest, contrary to section 125 of the penal code.

**The Law**

2. Section 8(b) of the Dangerous Act; to be read with section 39 of Dangerous Drug Act

*“Every person found in possession of or selling, or who shall have given or sold, to any person any substance to which this part of this Act applies’*

*Read with section 39(1) of the Dangerous Act; shall be guilty of an offence against this Act; on summary conviction, to a fine of five hundred dollars, or to imprisonment for six months, or to both such fine and imprisonment.”*

*Penalties Miscellaneous Amendments Act 2009;*

*Section 39 (2)(b) penalties; fine of 5,000.00 or to imprisonment for 3 year imprisonment or to both fine and imprisonment.”*

3. It was alleged that on the 19<sup>th</sup> July 2018 in front of Ocean Sky Shop in Point Cruz, Mr. Nalaparo was found in his possession a total of 17 rolls of marijuana for his own used.
4. The defendant was later charged and brought before this court. He had pleaded guilty to the charge and stand for sentence today.
5. On mitigation, Mr. Kwalai of Public Solicitors Office had submitted on behalf of the defendant seeking this court to consider that the defendant is a first offender and he is a juvenile at the time of the commission of the offence.
6. He seek the court to deal with Mr. Nalaparo under the Juvenile Offenders Act, in particular, section 16.
7. The defendant had pleaded guilty to the offence indicates his remorseful and regret of his action.
8. On the other hand, the prosecution had submitted and seek the court to impose a deterrence sentencing.
9. Mr. Kwalai has referred me to the case *Regina v Gome* (20116) SBMAC 6 as a guard line case for the offence of in possession of dangerous drug or commonly known marijuana. In this case, the Magistrate court imposed a total sentence of 4 months imprisonment.
10. Since this case is binding on the charge of in possession of marijuana, I will not impose the same, however, this court is intended to deal with the defendant under the Juvenile Offenders Act.
11. Mr. Nalaparo is 17 years old at the time of the offending, I will deal with him under the more appropriate section in this Act.
12. Juvenile Offenders Act is a special law to protect children and young person such as you to be treated as adults. Section 12 (2) of that Act does not allow young person like you to be sent to prison. However, section 16 of the Act gives the court options to send any young person who found guilty of any offence to prison. Section 16 (J) is another option provides to send you to prison if that option cannot be avoided in the circumstances of your case.

13. I take judicial notice in this proceeding to note that smoking, planting, sales and in possession of marijuana is become an alarming problem in our country. No country especially in the pacific wants prohibited drugs within their shores. I believe the authorities in our happy isles had taken tough and tireless measures trying to avoid this problem. The courts in our jurisdiction has also trying all the possibility through the power of its duty to avoid such problem by imposing deterrence penalties. Interestingly, this same penalties continue to raise the same question being raised 18 years ago in the High Court cases in *Warnecke v Regina* (1998) and *Louise Pamela Kelly* (2008). The question of whether the crime rate for this offending at that time is the same to the present circumstances. In my view, that sentencing no longer relevant in our present crime rate on in possession of dangerous drugs or marijuana. The law in my view is very need to adjust itself to the present case or circumstances experience by our country.
14. This offence requires a deterrence penalties to send a message to our community that people who use and possess prohibited drugs will meet the penalty weight of our laws. This kind of approach is not only to discourage further commission of these offences by likeminded offenders but to protect the current group of youths or individual who are at risk of becoming mentally affected by the use of this harmful substance. Indeed, we have experienced in our streets in Honiara and perhaps out there in the provincial communities. This is where the court has its duty to avoid that situation.
15. After considering all these interests together, the facts of the case, the circumstances of the offence and the defendant and the aggravating and mitigating factors together, a custodial sentence is inevitable in your case.
16. When I intend to impose a deterrence sentencing in this case, however, your youth status have influence me to be lenient towards you. It is my duty to see what avenue available for this court to deal with young offenders like you. At the back

of my mind, you are a juvenile where this court will deal with your case under the Juvenile Offenders Act.

*Juvenile Offenders Act*

17. Juvenile Offenders Act is a special law to protect children and young person such as you to be treated as adults. Section 12 (2) of that Act does not allow young person like you to be sent to prison. However, section 16 of the Act gives the court options to send any young person who found guilty of any offence to prison. Section 16 (J) is another option provides to send you to prison if that option cannot be avoided in the circumstances of your case.

18. It appears in court that if you release to your parents or guidance, they will not looking after you as been proved in the past. However, I will give you one last chance to impose a sentence under *section 16 (h) of Juvenile Offenders Act. That is, to order your release to enter into a bond to appear and receive sentence when call upon,*

19. I order that you will come back to receive your sentencing after entering a 12 months bond;

20. Therefore; you are ordered to come back and receive your sentencing on 23<sup>rd</sup> of November 2019 at the Central Magistrates Court.

21. If you commit any offence within this 12 month bond, you will be arrested and served 12 month imprisonment.

Right of appeal to the High Court against this sentence within 30 days.

