

IN THE SUPREME COURT OF SAMOA

HELD AT APIA

- delay

- Breach Art 9 Constitution

BETWEEN: POLICE

Informant

A N D:

TUUA GAGO FASI of
Tanugamanono

Defendant

Counsel: G B Powell for the Informant
Defendant in person

Hearing Date: 1 July 1998

ORAL DECISION OF MORAN J

The defendant, Tuua Fasi Gago, appears today on a charge of possession of cannabis and a charge of cultivation of cannabis.

These charges have an unfortunate history.

The offences were allegedly committed on 30 November 1995. Apparently, charges were then laid and brought on for hearing. However, either at the time of the hearing or in advance of the hearing date, the charges were withdrawn by leave of the Court.

I am informed from the bar that the reason they were withdrawn is because the prosecution was having difficulty in obtaining expert evidence as to the nature of the plants and substances alleged to be cannabis.

Mr Gago then believed that that was the end of the matter and that he had spent \$500 on a lawyer to achieve a good result. To his astonishment, and I may say to mine, these charges were relaid on 23 May 1997.

Mr Gago then instructed another lawyer and spent \$200.00 on securing further advice.

Today, the matter has come on for trial and Mr Gago's lawyer Mr Toailoa has been granted leave to withdraw.

I have permitted him to withdraw because I accept that his only having received trial documents today rendered him unable to properly represent his client. I intended to conduct the trial with Mr Gago representing himself, because Mr Powell for the Police informed me that it was as long ago as last November that the trial documents were served on Mr Gago's then lawyer.

Mr Gago has told me that this is news to him and he has not seen the trial documents before today.

That being the case the trial would have to be adjourned.

I intend to take a different course, however, because it seems to me that Mr Gago has been very badly treated. Article 9 of the Constitution provides that Mr Gago is entitled to a fair and public hearing within a reasonable time.

More than one year has elapsed since the current charges were laid, and it is now getting close to three years since the initial charges were laid.

There has been no trial through no fault of Mr Gago, and if I allow the proceeding to go further, he will have spent \$700.00 to no effect. On the face of it, these charges should never have been relaid, but I am reluctant to criticize the Police because I do not know the full circumstances.

Suffice it to say that these charges should now be dismissed on the merits and they are so dismissed.

Mr Gago these charges have been dismissed and you will not have to face these particular charges again. You may go.



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Moran J