

IN THE COURT OF APPEAL, FIJI ISLANDS
AT SUVA

Appellate Jurisdiction

CRIMINAL APPEAL NO. AAU0055 OF 2008

BETWEEN : SAILOSI ROKO *Appellant*
AND : THE STATE *Respondent*

Before the Honourable Judge of Appeal, Mr Justice John E Byrne

Counsel : F. Vosarogo for the Appellant
Ms A. Prasad & Ms N. Tikoisiva for the Respondent

Date of Hearing &
Ruling : 7th October 2008

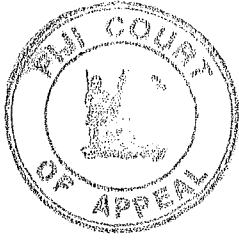
R U L I N G

- [1] The *Appellant* applies for leave to appeal against a sentence of four years imprisonment imposed on him by Goundar J. in the High Court after he had been found guilty of being in possession of an illicit drug, cannabis (commonly known as marijuana), weighing 1,958.3grams.
- [2] The maximum penalty prescribed by Parliament for this offence is life imprisonment. The *Appellant* is 30 years old, married with four children aged between 1 year and 9 years. His wife was at the time of sentence expecting another child. His family is financially dependent on him for support.

- [3] The Learned Judge considered that although he was a first offender a custodial sentence was called for although the Judge recognised that this would cause hardship to his family because the *Appellant* is the sole breadwinner. The *Appellant* is a first offender and the Judge said that he deserved substantial credit for previous good character.
- [4] Against this the Judge said aggravating factors were the large quantity of the drugs and that they were for commercial supply. They were separately packaged in aluminium foil and glad wrap. He stated that the amount of drugs and the packaging of them showed that they were for supply. In his evidence the *Appellant* said he was not a drug user.
- [5] The learned Judge then continued that cannabis use is prevalent in this community. The users are generally young people and he commented that the number of young people who appear before the Courts found in possession of cannabis for personal use is a matter of great concern for the Courts. He then stated that in supply cases, there is always an element of financial gain for the supplier and selfish disregard of the harm to users. For this reason he considered a deterrent sentence was called for and said that people who supplied illicit drugs should expect severe sentences from the Courts.
- [6] This Court cannot quibble with His Lordship's remarks so far but the question is did he commit any appealable error in imposing the sentence of four years?

- [7] The *Appellant* filed five grounds of appeal all of which, after hearing argument, I asked Counsel for the *Appellant* whether he wished to maintain these grounds or to substitute only one namely that the Learned Judge should have mentioned the sentencing range for offences of this nature and how he arrived at the sentence he imposed on the *Appellant*?
- [8] This suggestion was made to Counsel after Mr Vosarogo raised it himself and in my opinion, which is not disputed by Counsel for the Respondent, it is at least an arguable ground to be put before the Full Court. Perhaps it may be presumed that in stating that the maximum sentence was life imprisonment the learned Judge considered that in all the circumstances of the *Appellant* four years was reasonable but in my Judgment that is not the answer to the *Appellant's* complaint. Clearly the maximum term is reserved for the worst possible case and obviously the learned Judge did not consider this was such a case.
- [9] In my Judgment for the benefit of the *Appellant* and the Judiciary and Magistracy it is desirable that Sentencers state the range or current tariff for offences of this nature and that therefore in my view the *Appellant* is entitled to make such a submission and substitute this ground of appeal to the Full Court. Accordingly I grant leave to appeal on the following ground only:

"That the learned Judge failed to mention the sentencing range for offences of this nature and how he arrived at the sentence he imposed on the Appellant".



John E. Byrne

[John E Byrne]
JUDGE OF APPEAL

At Suva

7th October 2008