

IN THE HIGH COURT OF FIJI AT SUVA

CASE NO: HAC. 076 of 2017

[CRIMINAL JURISDICTION]

STATE

V

SAKARAIA DUKUBURE

Counsel : Ms. S. Serukai for State
Accused in person

Dates of Hearing : 18th April, 2017

Date of Sentence : 28th April, 2017

SENTENCE

1. Sakaraia Dukubure, you stand convicted upon pleading guilty to the following offence;

Statement of offence (a)

UNLAWFUL CULTIVATION OF ILLICIT DRUGS: Contrary to section 5(a) of the Illicit Drug Control Act, 2004.

Particulars of offence (b)

SAKARAIA DUKUBURE on the 13th day of January 2017 at Wailailai Settlement, Wainibuka, Tailevu in the Central Division, without lawful excuse cultivated 4.34kg of Cannabis Sativa or Indian hemp an Illicit Drug.

2. The summary of facts are as follows;

“On the 13th day of January 2017, at about 0330hrs at Wailailai settlement, Naibulini, Wainibuka, the drugs operation team led by IP Joseva Naitini (A-1) station officer of Korovou police station raided and uprooted 74 green plants believed to be marijuana which belongs to one Sakaraia Dakubure Nawaikalou, 45 years (B-1) farmer of the same settlement.

On the above mentioned date, place and time (A-1) led a team of 20 police officers to (B-1)'s place after (A-1) received information from a disclosed source that (B-1) is unlawfully cultivating illicit drugs at his farm at Wailailai settlement, Naibulini. At (B-1)'s place, one Inia Valeluma, 45 years (A-2) farmer of the same settlement, led (A-1) to (B-1)'s farm and showed (A-1) the green plants believed to be marijuana which was cultivated by (B-1), (A-1) and his team uprooted the green plants believed to be marijuana, with the total of 74 green plants. (B-1) was not at his house during the time of the raid. After the raid (A-1) and his team took the 74 green plants believed to be marijuana to Korovou police station where by (A-1) locked 74 green plants believed to be marijuana in his room for safe keeping. At about 1330hrs (A-1) handed over the 74 green plants to WSC 2679 Marai Kaci (A-2) police officer of Korovou police station whereby (A-2) ESCORTED THE 74 GREEN PLANTS ON Fleet 122 to Nasova and it was handed over to the Principal Scientific Officer, Miliana Raravoso (A-3), to be analysed. At Nasova at about 1600hrs the 74 green plants was handed back (A-2), with its analysis report and result with the confirmed weight of 4.3kg which biologically known as Cannabis Sativa or Indian Hemp. The illicit drugs was then handed over to the crime writer WDC 4501 Mere Lekanagata (A-4) and was kept in the Exhibit room vide Korovou R.C.E No: 07/17 is relevant.

At about 1800hrs (B-1) voluntarily surrender himself at Korovou police station where by (B-1) was arrested by Cpl 4106 Waisea Sokia (A-5) police officer of the said police station, (B-1) was kept in police custody. On the

15th of January 2017, at about 1000hrs at (B-1) was cautioned interview by PC 4174 Alivereti 42 years (A-6) whereby (B-1) admitted to the offence. (B-1) also stated the reason for the cultivation of illicit drugs is to support his children who attending to tertiary school. (B-1) was then charged for one count of unlawfully cultivation of drugs and will be appearing in custody."

3. The maximum penalty for committing an offence under section 5 of the Illicit Drugs Control Act 2004 ("Illicit Drugs Control Act") is a fine not exceeding \$1,000,000 or imprisonment for life or both.
4. In the case of *Tuidama v State* [2016] FJHC 1027; HAA29.2016 (14 November 2016) this court decided to apply the following tariff for the offence of unlawful cultivation of illicit drugs;
 - a) The growing of a small number of plants for personal use by an offender on a non-commercial basis - 1 to 2 years imprisonment;
 - b) Small scale cultivation for a commercial purpose with the objective of deriving a profit - 3 to 7 years imprisonment;
 - c) Large scale commercial cultivation - 7 to 14 years imprisonment.
5. Cultivating up to 10 plants can be considered as non-commercial cultivation if there is no other evidence to the contrary. Cultivating more than 10 plants up to 100 plants can be considered as a small scale commercial cultivation and cultivating more than 100 plants can be considered as a large scale commercial cultivation.
6. You have admitted that you cultivated 74 plants. Your sentence should be within the range of 3 to 7 years imprisonment as you had been engaged in small scale business cultivation according to the above categorisation.

7. I select 3 years imprisonment as the starting point of your sentence.
8. You were operating alone. Therefore you are solely responsible for the cultivation of the 74 plants. 74 plants is a substantial quantity for a small scale commercial cultivation where the range is 10 to 100 plants. You were motivated by financial gain. Considering these factors, I increase your sentence by 4 years.
9. In your mitigation, you submitted that you decided to cultivate illicit drugs to educate your children and to rebuild yourself after the cyclone destroyed your yaqona and banana plantation last year. You begged for leniency and forgiveness from this court.
10. The hardships you have endured due to the cyclone cannot be considered as an excuse to commit a crime. It is common knowledge that drug abuse can cause havoc in almost every area of an addicted person's life including his/her health and education. The lives of the family members and the loved ones of the drug addict are invariably affected. Therefore, the action you took to support your family and the education of your children in fact has the potential of destroying another family and the education of another child. Your excuse cannot be accepted as a mitigating factor.
11. The prosecution points out that you are a first offender. You have cooperated with the police. I deduct 1 year of your sentence in view of these factors.
12. You had pleaded guilty to the charge on the first available opportunity. I deduct 2 years in view of your early guilty plea.
13. Your final sentence is 4 years imprisonment. Considering all circumstances I order that you are not eligible to be released on parole until you serve 2 years of your sentence pursuant to the provisions of section 18 of the Sentencing and Penalties Act 2009.

14. Section 24 of the Sentencing and the Penalties Act reads thus;

“If an offender is sentenced to a term of imprisonment, any period of time during which the offender was held in custody prior to the trial of the matter or matters shall, unless a court otherwise orders, be regarded by the court as a period of imprisonment already served by the offender.”

15. I note that you have spent around 03 months and 2 weeks in custody in relation to this case. The period you were in custody shall be regarded as a period of imprisonment already served by you in view of the provisions of section 24 of the Sentencing and Penalties Act. I order that the period to be considered as served should be 4 months.

16. In the result, you are sentenced to an imprisonment term of 04 years with a non-parole period of 02 years. Considering the time spent in custody, the time remaining to be served is as follows;

Head Sentence - 03 years, 08 months

Non-parole period - 01 year, 08 months

17. 30 days to appeal to the Court of Appeal.



A handwritten signature in blue ink, appearing to read 'Vinsent S. Perera'.

Vinsent S. Perera

JUDGE

Solicitors for the State : Office of the Director of Public Prosecutions, Suva.