

IN THE RESIDENT MAGISTRATE'S COURT AT SUVA

Criminal Case No.424/2013

THE STATE – MARIKA TUIMABUALAU

For Prosecution: WPC Fisher

For the Accused: Mr. Toganivalu

SENTENCE

1. MARIKA TUIMABUALAU, you were charged with the offence of Unlawful Possession of Illicit Drugs contrary to section 5 (a) of the Drugs Control Act Number 9 of 2004 and the particulars of offence states as follows; That;

On the 05th day of March, 2013 at Falvey Road, in the Central Division, without lawful authority, possessed **751.3 grams** of Cannabis Sativa, an Illicit Drug.

2. The summary of facts of this case that was submitted by the prosecution and admitted by you is as follows;

On 05th day of March, 2013 at about 6.30am, Sgt 1739 Adriu Naitukuni of Drug unit, executed a search warrant at Falvey Road at the house of Marika Tuimabualau [Accused] 29 years in which 2 pot plants believed to be Indian Hemp Plants was found at the back of his house. The [Accused] was escorted to Raiwaqa Police Station where he was interviewed under caution and admitted the allegation. The Government Principal Scientific Officer, analysed the plants confirmed that the said 2 pot plants of Indian hemp were positive to be Cannabis Sativa with a total weight of **751.39 grams**.

3. I have considered mitigating factors and your personal background which were brought before me in your written mitigation which states amongst others that;

You are remorseful and have learnt a lesson from your mistake and promise not to reoffend. You seek apology from the Court and to all those who were affected in any way by your actions including your family.

The submission further reads that you are now looking for a job to cater for your family's needs and you have a Diploma in Accounting and has just started his 1st year as a Bachelor of Arts majoring in Accounting. Further submits that if the court imposed a custodial sentence you will not be able to support your wife and young children and as a result your family will also suffer. Further submits that your children need your financial and fatherly support in their maintenance and education.

Furthermore, it were submitted that you are not a habitual offender or someone that lives off the supply of drugs and admits offence and states that the possession of the illicit drugs was only for your personal use.

4. **Relevant Law;**

Section 5 reads; Any person who without lawful authority-

- (a) acquires, supplies, possesses, produces, manufactures, cultivates, uses or administers an illicit drug; or
- (b) engages in any dealings with any other person for the transfer, transport, supply, use, manufacture, offer, sale, import or export of an illicit drug; commits an offence and is liable on conviction to a fine not exceeding \$1,000,000 or imprisonment for life or both.

The Tariffs;

I draw my attention to the recent **Judgment Sulua v State [2012] FJCA 33; AAU0093.2008 (31 May 2012)**. In Sulua v State [2012] FJCA 33, in a majority judgment of the full court, His lordship Justice Temo laid out the current accepted principles of sentencing persons charged with any offence under section 5 (a) as follows:

“(i) Category 1: Possession of 0 to 100 grams of cannabis sativa – a non-custodial sentence to be given, for example, fines, community service, counseling, 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: Possession of 100 – 1000 grams of cannabis sativa. Tariff should be a sentence between 1 to 3 years imprisonment, with those possessing below 500 grams, being sentenced to less than 2 years, and those possessing more than 500 grams, be sentenced to more than 2 years imprisonment.

(iii) Category 3: Possessing 1,000 to 4,000 grams of cannabis sativa. Tariff should be a sentence between 3 to 7 years, with those possessing less than 2,500 grams, be sentenced to less than 4 years imprisonment, and those possessing more than 2,500 grams, be sentenced to more than 4 years.

(iv) Category 4: Possessing 4,000 grams and above of cannabis sativa. Tariff should be a sentence between 7 to 14 years imprisonment.

Consequently, the four categories mentioned above, apply to each of the verbs mentioned in section 5 (a) of the 2004 Act mentioned above. The weight of the particular illicit drug will determine which category the case falls under, and the applicable penalty that will apply”.

5. **Sentence**

In the light of above cited guideline Judgement and considering the general principle of sentencing under Section 15 (3) of the Sentencing and Penalties Decree and objective of sentencing under section 4 (1) and 4 (2) of the Sentencing and Penalties Decree.

In Sentencing you, I consider and acknowledge your early guilty plea, mitigating factors including your personal background, your previous clear records; I also note that you are remorseful.

The Analysis Report dated 05-03-13 by the Government Principal Scientific Officer; analysis confirmed that the said 2 pot plants of Indian hemp were positive to be Cannabis Sativa with a total weight of **751.39**

grams. Those possessing more than 500 grams, be sentenced to more than 2 years imprisonment.

In this case, you fall into the Second Category. See *Sulua v State* (supra) therefore, I pick 03 years imprisonment period as a starting point.

You have possessed 751.3 grams of Cannabis Sativa. I note that you have stated that you planted those two plants of Indian hemp for your personal use. I am of the view that the above mentioned tariff for Category 2 was set out considering the weight of the Possession. Therefore, I do not wish to increase your sentence for the aggravating factors.

I acknowledge your early guilty plea in the first available opportunity and deduct 01 year from the term of imprisonment. see; ((*Mahendra Singh v. State Criminal Appeal No.AAU0036 of 2008S* and *Akili Vilimone v State, Cr. App. HAA 131/2007*)

I note that you have clear records as a first offender and remorseful. Considering the same I deduct 06 months and considering your mitigation and personal background, I further deduct 06 months to reach imprisonment period of 01 year.

Section 26 (2) (b) of the Sentencing and Penalties Decree provides a sentence which is below two years could be suspended by this court. Now, this court has to determine the imprisonment periods to be suspended or not.

The level of the tariff goes to reflect the seriousness of offence of this nature. You have urged the Court to impose a non-custodial sentence as you are a University student and have potential employment opportunities, and also to consider your personal and family circumstances.

The public need for deterrence will often outweigh the personal needs of an offender who has been charged with Unlawful Possession of Illicit Drugs which falls into the second category. Without doubt a custodial sentence will have an effect on your carrier prospects and personal life; however it is a consequence of your own conduct. I am of the view that you should have think about your education, career prospect and wellbeing of your family before you committed the offence. Further, I do not see any compelling reasons to suspend your sentence.

Accordingly, I sentence you 01 year imprisonment period with immediate effect for the offence of Unlawful Possession of Illicit Drugs contrary to section 5 (a) of the Drugs Control Act Number 9.

I furthermore make an order that if there are any drugs remaining in police custody, that such drugs to be destroyed and a Certificate confirming the same is to be forwarded to the Court for the record within 28 days.

Right to Appeal

28 days to appeal.

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Lakshika Fernando

Resident Magistrate

On this 02nd day of July 2013