

IN THE MAGISTRATES' COURT OF FIJI
AT NADI
[CRIMINAL JURISDICTION]

Criminal Case no: 550/2024

STATE

v.

AVINESH MENON

For Prosecution: WPC Evu

For Accused: Ms Mario (LAC) as Duty Solicitor

Date of Sentence: 8th November, 2024

SENTENCE

Background

1. AVINESH MENON [hereinafter referred to as the 'Accused'] you were charged with one count of **Unlawful Possession of Illicit Drugs**: contrary to section 5 (a) of the Illicit Drugs Control Act, 2004.
2. The weight of the illicit drugs, namely Methamphetamine is **18.310 grams**
3. You were represented by private counsel for your bail matter however as the matter was called on various mention dates they stopped appearing for your matter. On 27th September, 2024 the date for hearing, bail was refused and Prosecution made an application to adjourn the hearing. This was refused by the court and the matter proceeded for hearing. The State called two witnesses and then the matter was adjourned to 11th October, 2024 for continuation of hearing.
4. On 11th October, 2024 the accused indicated that he wanted to change his plea and plead guilty. Since the accused was not represented and charged with a serious

offence the court stood the matter down for a counsel from Legal Aid Commission to assist and advise the accused. In any event the court was ready to proceed for continuation of hearing.

The matter was recalled and the counsel appearing as duty solicitor for Legal Aid commission advised the court that the accused was ready to take his plea and take a progressive approach.

5. As per advise from Ms. Mario (Duty Solicitor) she informed the court that you were ready to take plea. The language preferred was English. The charge was read, explained and understood by you. You pleaded guilty to the charge on your own free will. You understood and admitted to the Summary of Facts that was read to you
6. Briefly on 15th May, 2024, the said drugs were found between your thighs after the police opened your ¾ zipper pants. The drugs were found after a physical search was conducted. Upon searching they found 1 * clear plastic (glad wrap containing 3 small Ziplock bag, 2 * sachets and 1 *sachet; all containing clear white crystals. The said drugs were tested and turned positive for methamphetamine weighing 18.310 grams.
7. The Prosecution tendered the following documents as Prosecution evidence:
 - i. The Summary of facts dated 11/10/2024 -Prosecution Exhibit 1
 - ii. The general sample certificate analysis dated 16/5/24 - Prosecution Exhibit 1A
 - iii. Result certificate dated 16/5/24 - Prosecution Exhibit 1B
 - iv. The formal written statement by Scientific Officer Mere Tauvoli dated 16/5/24 - Prosecution Exhibit 1C
 - v. The brown evidence envelope with the red tape labelled RCE#3375124 - Prosecution Exhibit 2
 - vi. The accused Record of Interview - Prosecution Exhibit 3 [which had admissions to possession at QNA 79-81]
 - vii. The search list - Prosecution Exhibit 4

8. Being satisfied with your guilty plea to the charge and your admission to the Summary of Facts, the Court convicts you as charged.

Statutory Sentence and Tariff

9. The sentence for *Unlawful Possession of Illicit Drugs* is life imprisonment and/or a fine of \$1,000,000.
10. There was no established tariff or a guideline judgment for offences involving Methamphetamine until the Fiji Court of Appeal pronounced the judgment in **Abourizk v State [1991] FJCA 98 (7 June 2019)**. Having considered the judicial pronouncements in Fiji and in other jurisdictions, the Court of Appeal set the following sentencing tariff for all offences defined in Section 5(a) and 5(b) of the Illicit Drugs Control Act 2004 involving hard drugs such as Cocaine, Heroin and Methamphetamine.

Category 1 - Up to 05g- 02 ½ years' imprisonment

Category 2 - More than 05g up to 250g - 3 ½ years to 10 years' imprisonment

Category 3- More than 250g up to 500g - 09 years to 16 years' imprisonment

Category 4- More than 500 g up to 01 kg -15 years to 22 years' imprisonment

Category 5 - More than 01 kg- 20 years to life imprisonment

The Court emphasised that the sentencing outside the bands is not forbidden, although it must be justified. The weight given in each category appears to be based on the assumption that the substance contained pure drug, in this case Methamphetamine.

Considering the weight of the illicit drugs in this case, the accused falls into Category 2 which is 3 ½ years' imprisonment to 10 years' imprisonment.

Aggravating and Mitigating Factors

11. The aggravating factor is that this offence is prevalent in our society.
12. On indication of where the drug was found it would seem that you were trying to conceal the drugs.
13. The court has considered your mitigation which is part of the court record and I have considered it in deciding the sentence for this accused. Factors noted are your remorse, you seek forgiveness, you seek leniency and you now understand the consequences of the charges against you).
14. You are not a first offender.

Guilty Plea

15. Despite the hearing commencing and two witnesses being called some weight but not the full weight will be given.

SENTENCE

16. In sentencing you, the court took into account the factors outlined in section 4(1) and (2) of the Sentencing and Penalties Act 2009.
17. As correctly stated in the case of **State v Reddy - Sentence [2023] FJHC 172; HAC30.2023 (24 March 2023)** the Honourable Aruna Aluthge stated:

The maximum punishment prescribed for the offence signifies the seriousness of the offence.

Methamphetamine abuse has both short and long-term adverse health effects. This drug was initially used as a treatment for asthma, though is rarely used for that purpose today. When used in solution form for injecting or free-base form for smoking, the impact is very fast and strong, and has a much greater propensity for dependence and addiction. The gravity of Methamphetamine addiction was explained as follows by Professor Nutt in his evidence given in the case of Zhang v R [2019] NZCA 507 [21 October

2019] (in which the new guideline was set by the New Zealand Court of Appeal):

Methamphetamine dependence/addiction is a brain disorder that once established is hard to overcome. It does not go away on its own by simply stopping someone using methamphetamine. The desire to use is often present for years after stopping because the memories of the effects of methamphetamine, especially when smoked or injected, are so powerfully pleasurable that they never go away. The desire to use again, even when the person knows that to do so will lead them back into the addiction, or even to prison, can be profound and in many cases will overwhelm their intention not to use.

18. The illicit drug offending has become a serious problem in Fiji. A higher quantities of hard drugs such as methamphetamine have been seized in recent years. Deterrence is a legitimate sentencing purpose in the Sentencing and Penalties Act and the real life experience tells us that it works for most people. In the context of methamphetamine sentencing, particularly relevant purposes include deterrence of the offender/other persons from committing similar offending and the protection of the community.
19. Taking into consideration the seriousness of the offence of **Found in Possession of illicit drug**, the Court takes the starting point of 48 months' imprisonment, I add 20 months for aggravating factors in this case. For your mitigation 6 months is deducted, so the interim sentence comes to 62 months imprisonment. Considering your early change of plea, your sentence is reduced to 59 months imprisonment.
20. The court also considers the time you have spent in remand and deducts that accordingly. You were interviewed on 15th May, 2024 and produced in court on 17th May 2024 and have been remanded till today. I consider the remand period of 6

months as an imprisonment term you have already served. I deduct 6 months for the remand period to arrive at a final sentence of 53 months' imprisonment.

21. Under section 18 (1) of the Sentencing and Penalties Act (as amended), this court has the powers to impose a non-parole period to be served before the accused is eligible for parole. It is obvious that the accused has now taken responsibility for his actions, had cooperated with the police during the pre-charging and by pleading guilty even though late the accused is genuinely interested in reforming himself.

In this regard I have taken into consideration the principle stated by the Court of Appeal in **Paula Tora v The State AAU0063.2011 (27 February 2015)** at paragraph 2 Calanchini P (as he was) said:

[2] The purpose of fixing the non-parole term is to fix the minimum term that the Appellant is required to serve before being eligible for any early release. Although there is no indication in section 18 of the Sentencing and Penalties Decree 2009 as to what matters should be considered when fixing the non-parole period, it is my view that the purposes of sentencing set out in section 4(1) should be considered with particular reference to re-habilitation on the one hand and deterrence on the other. As a result the non-parole term should not be so close to the head sentence as to deny or discourage the possibility of re-habilitation. Nor should the gap between the non-parole term and the head sentence be such as to be ineffective as a deterrent. It must also be recalled that the current practice of the Corrections Department, in the absence of a parole board, is to calculate the one third remission that a prisoner may be entitled to under section 27 (2) of the Corrections Service Act 2006 on the balance of the head sentence after the non-parole term has been served.

22. Considering the above, I impose 40 months as a non-parole period to be served before the accused is eligible for parole. I consider this non-parole period to be appropriate in the rehabilitation of the accused and also meet the expectations of the community which is just in the circumstances of this case.

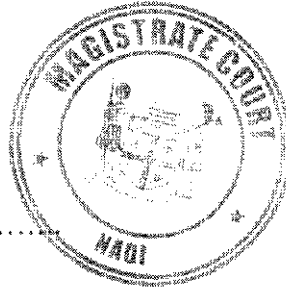
22. In addition, the Court makes the following Orders:

- i. that the illicit drugs to be destroyed, after the 28 days appeal period.
- ii. a staff of the Nadi Magistrate Court registry to be present during the destruction of the said illicit drugs.
- iii. the Prosecution to file a Destruction Report.
- iv. The said report to be filed at the Nadi Magistrate Court Criminal Registry within 3 days, after the appeal period.
- v. The destruction report to be part of the court record.

28 days to appeal



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Talei Kean
Resident Magistrate



8th November, 2024