

IN THE HIGH COURT OF FIJI
AT LABASA
[CRIMINAL JURISDICTION]

CRIMINAL CASE NO. HAC01 OF 2018

BETWEEN: **THE STATE**

AND: **ALIPATE VUICAKAU**

Counsel: **Mr R Kumar for the State**
 Ms C Choy for the Accused (Duty Solicitor)

Date of Hearing: **16 January 2018**

Date of Judgment and Sentence: **19 January 2018**

JUDGMENT AND SENTENCE

- [1] Alipate Vuicakau, on 16th January 2018, you appeared before this Court and pleaded guilty to a charge of an unlawful cultivation of an illicit drug contrary to section 5(a) of the Illicit Drugs Control 2004. Before I accept your plea of guilty, I have to be satisfied that your plea is not ambiguous and you are informed of the consequences of a guilty plea. You made the decision to plead guilty after talking to counsel from the Legal Aid Commission.
- [2] When you entered the plea of guilty, you informed the Court that you were pleading guilty freely, voluntarily, without inducement or mistake. You said you understood your trial rights and were waiving them. After hearing you, your counsel and the facts tendered by the prosecution in support of the charge, I am satisfied that your plea of guilty is valid. I accept your guilty plea and convict you accordingly of the charge. I now sentence you for your offence.
- [3] In sentencing, I am obliged to consider the facts upon which to base the sentence. On 22nd December 2017, a raid was carried out at your farm by the police officers from

Vanua Levu. When the police officers arrived at your village at Korovonu, Tunuloa, Cakaudrove, you led the team of police officers to your farm where you have been growing Cannabis Sativa, commonly known as marijuana. Altogether 21 grown up plants were uprooted and sent to a senior government analyst for a test.

- [4] On 23rd December 2017, the plants were tested in a government lab. The height of the plants was recorded in the report to be from 133cm to 302cm. The total weight of the 21 plants was 17.1kg. Result from the test was positive. The plants were Indian Hemp botanically known as Cannabis Sativa. In your caution interview, you admitted cultivating the illicit plants to support your livelihood as a farmer.
- [5] The offence you committed is serious. The seriousness of the offence is reflected in the maximum penalty prescribed for it. It is life imprisonment. Cultivation of an illicit drug for commercial purpose is a serious offence. The marijuana plants that were seized from your farm were grown up plants, ready for supply. They were not for personal use. You admitted you grew the plants to support your living as a farmer. Deterrence, both special and general, is the primary purpose of sentence that applies in your case.
- [6] I am further guided by the majority decision of the Court of Appeal in *Sulua v State* [2012] FJCA 33; AAU0093.2008 (31 May 2012) that recommends a tariff of 7 to 14 years imprisonment for unlawful possession of more than 4 kg of Cannabis Sativa. But I am careful in determining your culpability solely on the weight of the illicit drug. Weight of Cannabis Sativa plants can be affected by whether the plants are in green or dried state and whether the stems and roots were detached before the weight was determined. In the case of cultivation, it is not the weight but the number of plants and maturity of the plants that are relevant.
- [7] In your case, you grew a total of 21 marijuana plants. The prosecution has not led any evidence of the street value of the drugs seized from your farm. I am mindful that you are not involved in a large scale commercial farming of marijuana. You are a small scale farmer, who has fallen prey to the temptation to earn quick and easy money by those you are engaged in this lucrative drug business. They are the real perpetrators.

who exploit vulnerable and unsophisticated farmers like you, in pursuit of their criminal enterprise.

- [8] The most compelling mitigating factor is your early guilty plea. Your cooperation with the police in disclosing the location of your farm and your admission of the offence and your early guilty plea indicate that you are genuinely remorseful for your conduct. For that I discount your sentence by one-third.
- [9] You are 28 years old, single and a farmer. You have been educated up to Form 4. In drug cases, personal circumstances of the offender carry little value in sentencing.
- [10] You have two previous convictions that were entered in 2010. One is for house breaking and the other is for defilement. Suspended sentences were imposed for those offences. You committed the drug offence after you had served your suspended sentences. I take into account that this is your first drug offence and that you have not been in prison before.
- [11] You have been in custody on remand since your arrest on 22 December 2017. I give you a discount for your remand period.
- [12] Taking all these factors into account I sentence you to 4 years' imprisonment with a non-parole period of 3 years for unlawfully cultivating 21 Cannabis Sativa plants.
- [13] Drugs seized are to be handed to the High Court Registry to be photographed and destroyed after the expiry of the appeal period.



A handwritten signature in blue ink, appearing to read 'D. Goundar'.

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Hon. Mr Justice Daniel Goundar

Solicitors:

Office of the Director of Public Prosecutions for the State
Office of the Legal Aid Commission for the Accused