

IN THE SUPREME COURT OF FIJI
[CRIMINAL APPELLATE JURISDICTION]

Criminal Petition No: CAV 0020 of 2019
[On Appeal from the Court of Appeal Criminal
Appeal No: AAU 0095/14; HAC 013 of 2014]

BETWEEN: **GREGORY WILCOX STIRES**

Petitioner

AND: **THE STATE**

Respondent

Coram: The Hon. Mr. Justice Anthony Gates, Judge of the Supreme Court
The Hon. Mr. Justice Priyasath Dep, Judge of the Supreme Court
The Hon. Mr. Justice Priyantha Jayawardena, Judge of the Supreme Court

Counsel: Petitioner in Person
Mr S Babitu for the Respondent

Date of Hearing: 5th August, 2022

Date of Judgment: 25th August 2022

JUDGMENT

Gates J

[1] On 21st July 2014 the Petitioner was convicted after trial in the High Court at Lautoka of one count of unlawful possession of illicit drugs contrary to Section 5(a) of the Illicit Drugs Control Act 2004. The drugs comprised 3.8 kilograms of methamphetamines. He was sentenced to imprisonment for 9 years 6 months with a non-parole period of 8 years.

[2] In delivering judgment in the High Court the trial Judge said he rejected the version of events given by the Petitioner that he had no knowledge of the drugs in his suitcase. His Lordship said the defence version was highly improbable and inconsistent. This appeal largely concerns whether the prosecution had proved that the Petitioner had the necessary knowledge.

[3] The Petitioner was given an opportunity and time to file a written submission to this Court. He has not done so. Instead, he made brief oral submissions before us.

[4] Straight after the rejection of his first appeal, to the Court of Appeal, which had delivered its judgment on 4th October 2018, the Petitioner lodged an informal petition to this Court by letter dated 8th October 2018. This was lodged on his behalf by the Corrections Department only on the 14th December 2020. There may have been special reasons why this petition was lodged so late after its preparation by a prison inmate, the Petitioner. Being incarcerated a petitioner or appellant is entirely reliant on the corrections staff to lodge the appeal petition on his behalf within time. If there were no special reasons, such as COVID 19 movement restrictions, then Corrections Department is urged to treat the timely lodging of court documents as an important duty towards inmates in their care and to the courts in carrying out their functions.

[5] This petition is to be treated as having been lodged within time.

Facts and Evidence

[6] The Petitioner was represented by Counsel at the trial and before the Court of Appeal.

[7] On 2nd February 2014, the Petitioner arrived at Nadi International Airport. He presented himself at the arrival immigration counter. He was asked by the duty officer “*Sir, are you here for holiday?*” He replied “*yes.*” But on his arrival card he had ticked “*transit.*”

He was asked for his next destination and he replied “*if the plan goes well, I might go to Sydney.*”

- [8] The Immigration Officer noticed in his travel itinerary that the Petitioner had travelled from Lome to Addis Ababa, then to Hong Kong before arriving at Nadi. Because from his training, the Officer knew that the two African countries were regarded as transit countries for drug traffickers, the officer became suspicious. Therefore he profiled the petitioner for a 100% examination at the baggage hall. The Officer informed the Customs Officer in charge, the Supervisor of the baggage hall. From there on the officers in the baggage hall monitored the Petitioner.
- [9] A Customs Officer was detailed to carry out the examination. There were 3 bags in all. One contained a laptop. A second bag was a black suitcase. A third bag was coloured brown. Each of the two bags, the black one and the brown one, had his personal tags attached with his name, home address in Cincinnati, Ohio and with his telephone number. These personal name tags were in addition to the tags put on his bags by the airline ground staff.
- [10] In the 1st x-ray nothing suspicious came up. On the 2nd x-ray with the assistance of the bio-security officer the image on the screen showed there was something wrapped around on the side edges of the brown bag. Thereafter an ION scan test indicated positive. This machine can indicate the presence of illicit substances. Another x-ray, a 3rd x-ray, was carried out, just on the brown bag without the contents and the clothes. The wrap around edges with some substances were still indicated. A dog handler came from the K9 unit and the dog sniffer gave a positive indication to his handler concerning the brown bag.
- [11] Whereupon the bag was broken. Large heavy screws 3 to 4 inches long were unscrewed, and a crystal like substance was revealed around the inner edges of the bag, wrapped in black plastic.

[12] In the usual way the Petitioner was asked whether the contents were his and whether he had packed the bags himself. He replied “yes” to both. He wanted the examination to proceed and was co-operative with the Customs Officers. There was no obstruction from the Petitioner.

[13] On examination of the brown bag, it was found to be unusual, after it had been emptied of its contents. It seemed to the Customs Officer to be surprisingly heavy. Upon being re-x-rayed, the wrap around was noticed.

[14] One of the Border Police Officers seized the drugs and took them to the Government Analyst for further testing. The report of the Principal Scientific Officer was exhibited without challenge. It certified that the white powder sample tested positive for methamphetamine with a total weight of 3.794 = 3.8 kg.

[15] The Petitioner elected to give sworn evidence. He said he was a sports referee and that he prepared tax accounts. He was self-employed and worked from home. He said he was involved in leasing transactions. He travelled a great deal. He had been to other states in the United States and to Canada, Venezuela, France, and Mexico.

[16] He said he left (the USA) on the 22nd of January, 2014 to go to Lome in Togo (West Africa). He was to meet a Lawrence Green “*and some other people.*” Green was the organizer of his “*travel in this excursion.*”

[17] He said he knew Green for about 6 months. He was asked:

Q: Have you met him earlier?

A: No, haven't met him, supposed to meet him in Australia. He may have met me in Lome.

Q: How you were able to keep contact?

A: Email and phone.”

- [18] The Petitioner stayed 7 days at a hotel in Lome. He was asked if he had met anyone there, and said he met a Mr Nelson and the fiancé of Mr Nelson. Then “*another guy*” he said “*maybe, Lawrence Green.*”
- [19] Nelson brought money and a brown suitcase. The brown suitcase contained gifts which Green said the Petitioner was to deliver to a Mr Zubanda in Australia. He was going to meet Mr Zubanda when he reached Australia. He flew to Hong Kong and then to Fiji. He had checked in the 2 bags at Lome which he did not receive back until he arrived in Fiji.
- [20] In his evidence in chief, he said when the drugs were discovered at Nadi Airport inside the brown bag he denied all knowledge of the drugs being there. He said he was going to Australia to meet Mr Green and Mr Zubanda to discuss a business transaction. “*They were both brokers, some sort of financial transaction*” he said.
- [21] In cross-examination, he said he was qualified as a certified management accountant with a Bachelor’s Degree in Accounting. When asked whether he had met Mr Green, he said “*I may have met him and spoken to him in Lome.*” He had not however asked him whether he was in fact “*Mr Green.*” Once in Lome he had talked to Green over the phone and emailed him. He was not suspicious of doing business transactions with unknown people.
- [22] The prosecution produced in evidence the record of his caution interview. He was able to speak first to a Consular officer from the American Embassy. Afterwards in the interview he said he was living in Cincinnati. He earned “*about \$1000 USD a month.*” He said “*somebody paid for my ticket over there.*” It was “*Leonard I can’t remember his full name.*” He had met him on the internet.
- [23] This Leonard sent him some money while the petitioner was still in the States, “*he send me 3 times, and twice in Lome, Togo.*” The Petitioner was there in Lome to facilitate a transaction. When asked what that transaction was he said “*Leonard was going to*

transfer some money to me.” He was to deliver the bag with the clothes in it. These were gifts for Mr Zubanda.

[24] The questioning was quite lengthy, up to 185 questions. Many of the Petitioner’s answers were vague or he could not remember significant details of the travel.

[25] The learned Judge indicated to the assessors that the Petitioner’s explanation in questions 168 and 169 were inconsistent with what he had said in his sworn evidence in Court. In the interview he had said:

“Q167: So your intended place of destination from Togo was Australia?”

A: Yes.

Q168: Why to Australia?”

A: To deliver the gifts of Lawrence Green to Kamu Zubanda in Australia and receive our payment.

Q169: What kind of payment?”

A: Lawrence Green made to believe me that there are some of his funds with African Development bank and he can have it transferred to my Bank of choice from Australia and that all my trips will be financed by the financier arrange by him and out of the \$2million 50% will go to the financier.”

[26] He made no mention in his evidence of fees that he would be given from the African Development Bank, nor did he state what he was being paid for. What was the work he was to do for those fees and what advice was he to give? Why would unknown people bring him from Cincinnati all the way to Australia for a transaction he knew nothing about? And why did he need to stop for 7 days in Lome?

Grounds against conviction

[27] In his letter of appeal, he draws to the court’s attention that drug traffickers target senior citizens to carry drugs for them *“without their knowledge or on some pretext for the purpose for transporting drugs internationally via their luggage.”*

[28] He says there was no direct proof that he had knowledge of the hidden contents, of the illicit drugs. He said the prosecution had to prove he had physical custody and control of the drugs and also that he did so with the knowledge or belief that the substance in his bag were illicit drugs.

The Court of Appeal

[29] Before the single judge the petitioner was unsuccessful. On the 23.12.15 Goundar J ruled that the directions in the summing up on possession and on the inferences to be drawn were impeccable. The trial judge had been well aware of the requirements concerning proof of knowledge authoritatively stated in **Warner v. Metropolitan Police Commissioner** (1969) 2 AC 256.

[30] The Petitioner renewed his appeal against conviction before the full court of the Court of Appeal. His counsel made no complaint against the directions of the learned trial judge, nor to this court either. At its best the defence case is simply that he did not know anything about the concealment of the illicit drugs in the brown bag. The Court of Appeal had found that the trial Judge had adopted the right approach by applying the test of probability and consistency to the evidence.

[31] The nature of the activity from a full account of the circumstances, of the travel arrangements and the dealings with persons met on the internet, strangers who had handed him a bag to take to another unknown person in Australia by a circuitous route through Africa, taken all together, colour the conduct as indicative of a guilty mind.

[32] He admitted the bags were his, all of them, and that he had packed the bags. He had placed his personal tags on the bags, including on the brown bag which he later said was not his bag. There was the unusual weight of the brown bag when emptied of its contents. The large and heavy screws all around the rim. These factors together with the circumstances of his “*excursion*”, and that an accountant in a very small way of business in Cincinnati should have been involved in international leasing, confirm the Judge’s

finding that the petitioner's account of a lack of knowledge was highly improbable and inconsistent.

[33] The judge's finding was open to him on this evidence and is not to be faulted. The Court of Appeal's decision was also correct.

Ground against sentence

[34] No ground of appeal against sentence was brought before the Court of Appeal. The Petitioner must first raise his appeal on sentence with that court. There is nothing compelling in his complaint in this regard for this court to intervene prematurely.

[35] His personal circumstances may have been unfortunate and mitigating, but this was a case of possession of a large quantity of hard drugs. Sentences in such matters will tend to increase in order to deter an increasing number of persons found in possession whether for transit or for disposal in Fiji. On that basis his sentence of 9 years and 6 months imprisonment is likely to appear lenient. The offence carries a maximum penalty of a fine of one million dollars (\$1m dollars) or imprisonment for life. The legislature views the offence as extremely grave. This ground must fail.

[36] The petition does not meet the stringent criteria for the grant of special leave. Leave must be refused and the petition dismissed.

[37] Lastly, the Petitioner seeks an order from this Court directing the Fiji authorities to transfer him to the United States of America to serve his remaining sentence. This is not an order within the jurisdiction of the Supreme Court to make. It is an administrative matter handled on a government to government basis and depends upon what arrangements exist for such transfers. As a Court, we are therefore unable to make this order as requested.

Dep J

[38] I have read in draft the judgment of Gates J and I agree with his reasons and conclusions.

Jayawardena J

[39] I have the honor and privilege to read the draft judgment of Gates J. I am in agreement with the reasoning and the conclusion of the said draft judgment.

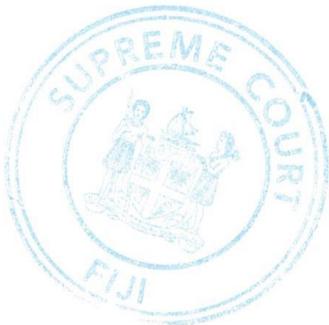
Orders:

In the result the orders of the Court are:

- 1) *Special leave refused.*
- 2) *Petition dismissed.*
- 3) *Conviction and sentence affirmed.*



Hon. Mr Justice Anthony Gates
Judge of the Supreme Court



Hon. Mr Justice Priyasath Dep
Judge of the Supreme Court



Hon. Mr Justice Priyantha Jayawardena
Judge of the Supreme Court