

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

CRIMINAL APPEAL NO. HAA 29 OF 2022

BETWEEN : **ILISONI TUINASAVUSAVU**

AND : **STATE**

Counsel : Ms M Manulevu for the Appellant
Ms L Latu for the Respondent

Date of Hearing : **28 February 2023**
Date of Judgment : **03 March 2023**

JUDGMENT

1. This is an unfortunate appeal where the High Court is being asked to correct a mathematical error in computing sentence.
2. On 28 May 2020, the appellant appeared before the Magistrates' Court at Savusavu and pleaded guilty to one count of possession of marijuana (13.7g) and one count of cultivation of marijuana (713 plants).
3. On 10 June 2020, the appellant was sentenced to an aggregate term of 7 years, 7 months and 2 days imprisonment with a non-parole period of 5 years and 6 months.

4. On 29 November 2022, the Registry received an application for enlargement of time to appeal against sentence from the appellant in prison. The length of the delay is almost 2 ½ years. The appellant has not explained the delay.
5. The appellant has two complaints. His first complaint is that his 1/3 discount for his early guilty pleas was incorrectly calculated. His second complaint is that his non-parole is too close to his head sentence and provides no incentive to earn one third good behaviour remission under the Correction Services Act.
6. The length of the delay is substantial. Where there has been substantial delay, the question for the court is whether there is a ground of appeal that will probably succeed? (Kumar v State; Sinu v State [2012] FJSC 17; CAV0001.2009 (21 August 2012)).
7. Counsel for the State concedes that there is a mathematical error in computing the one third discount for the appellant's guilty pleas.
8. The error is contained in para 19 of the sentencing remarks:

Taking into consideration the objective seriousness of the offence of Unlawful Cultivation of Illicit Drug (large scale cultivation category), the Court takes a starting point of 8 ½ years imprisonment and adds 3 years for the aggravating factor and deducts 12 months for the mitigation factors so the interim sentence is 10 ½ years imprisonment. The Court deducts full discount (1/3) for the early guilty plea and the sentence comes to 7 years, 7 months and 15 days imprisonment.

9. After adjusting the sentence for mitigating and aggravating factors, the learned magistrate arrived at a term of 10 ½ years which is equivalent of 126 months. One third of 126 is 42 months. The balance after a deduction of 42 months is 84 months (7 years) imprisonment. So the final sentence should have been 7 years

imprisonment, and not 7 years, 7 months and 15 days (less 13 days for remand) as computed by the learned magistrate.

10. Further, the learned magistrate did not give reasons why he decided to deprive the appellant an opportunity to earn one third good behavior remission in prison under the Correction Services Act by fixing the non-parole period close to the head sentence. The appellant took early responsibility for his crime. He was 27 years old at the time of the offending and had previous good character. He expressed genuine remorse. These factors weighed in favour of rehabilitation of the offender.
11. For these reasons, I grant the appellant an enlargement of time to appeal against sentence.
12. The sentence imposed in the Magistrates' Court is set aside and substituted with an aggregate sentence of 7 years imprisonment with a non-parole period of 4 ½ years.



A handwritten signature in blue ink, appearing to read "Daniel Goundar".

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Hon. Mr. Justice Daniel Goundar

Solicitors:

Office of the Legal Aid Commission for the Appellant

Office of the Director of Public Prosecutions for the State