

**IN THE COURT OF APPEAL, FIJI ISLANDS**  
**AT SUVA**

APPELLATE JURISDICTION

**CRIMINAL APPEAL NO. AAU0103 OF 2007**

**BETWEEN** : KOLIACI VARAUNO *Applicant*

**AND** : THE STATE *Respondent*

**BEFORE THE HONOURABLE JUDGE OF APPEAL JUSTICE JOHN**  
**E. BYRNE**

**Counsel** : Appellant - In Person  
: Mr P. Bulamainavalu for the Respondent

**Date of Hearing &**  
**Ruling** : 21<sup>st</sup> January 2008

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**R U L I N G**

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[1] The Applicant applies for '*Leave to Appeal Out of Time*' against a decision of Govind J. in the High Court at Lautoka on the 24<sup>th</sup> of May 2007. On that day the Applicant pleaded guilty to the possession of 606.5gms of marijuana. In mitigation he told Govind J. that he was a first offender, 32 years old and the sole person helping his father on his farm.

- [2] Having heard the Applicant and considered all the relevant facts the learned Judge sentenced him to imprisonment for a term of 2 years and 8 months. He now seeks leave to appeal that sentence on the ground that it is manifestly excessive.
- [3] The Applicant lodged his application for Leave to Appeal some 4 months after the date on which Mr Justice Govind gave his decision but in all the circumstances, and as counsel for the Respondent does not object I consider that leave should be granted out of time the delay being merely about 4 months.
- [4] The Applicant was charged under Section 5(a) of the Illicit Drug Control Act 2004. That Section provides so far as relevant, that any person who unlawfully acquires, possesses an Illicit Drug is liable on conviction to a fine not exceeding \$1,000,000 or imprisonment for life or both.
- [5] In his remarks on sentence the learned Judge said, and I whole-heartedly agree, that drugs are becoming an ever-increasing problem in society and their pernicious influence and harm cannot be over-stated. The Judge said that the quantity involved here was suggestive of

sale although no actual sale was alleged. The Judge concluded, also rightly in my view, that 606.5gms cannot be considered for personal use.

- [6] One of the cases cited by counsel for the Respondent before Govind J. was a decision of Shameem J. in Criminal Case No. HAC034 of 2006S, State -v- Luse Helu. Her Ladyship pronounced sentence on the 28<sup>th</sup> of August 2006. The Accused had pleaded guilty to one count of being found in possession of Illicit Drugs contrary to Section 5(a) of the Illicit Drugs Control Act and admitted being in possession of 291.2gms of cannabis sativa popularly known as marijuana. The learned Judge sentenced the Accused to 18 months imprisonment.
- [7] It will be observed that the amount involved in the present application was nearly 2½ times that in Helu's case so that for that reason alone I consider the sentence of 2 years and 8 months imposed by Govind J. was reasonable. This view is reinforced by the Illicit Drugs Control Act which, as I have said above reflects the seriousness of the attitude of the authorities to the possession of and dealing in Illicit Drugs.
- [8] Drugs are on any sensible view a scourge of the community and every effort must be taken in the interest

of society to punish those who deal in them. Obviously now heavier penalties are called for than those that were given when drug trafficking was in its infancy.

[9] In short I consider the learned Judge committed no error of law and consequently this application for Leave to Appeal must be refused.



A handwritten signature in cursive script, which appears to read "John E. Byrne". The signature is written over a horizontal dotted line.

[ John E. Byrne ]

**JUDGE OF APPEAL**

At Suva

21<sup>st</sup> January 2008