IN THE COURT OF APPEAL, FIJI ISLANDS AT SUVA

APPELLATE JURISDICTION

CRIMINAL APPEAL NO. AAUOO95 OF 2007

BETWEEN	:	**SAULA SAMU**	*Appellant*
AND	:	**THE STATE**	*Respondent*

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

Counsel	:	Appellant - In Person Ms A. Driu for the Respondent
Date of Hearing & Ruling	:	22nd January 2008

R U L I N G

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[1] The Appellant/Applicant who is 31 years old and must be approaching 32 now was unemployed at the time he was found in possession of 872gms of marijuana on the 20th of June 2006. He pleaded guilty and appeared before Govind J. in Lautoka on the 16th of February 2007 and was sentenced to a term of imprisonment of 2 years. He now

seeks leave to appeal against that sentence on the ground that it was excessive.

[2] The learned Judge noted his expression of remorse and, starting with a term of 3 years added 1 year for the amount in excess of 500gms.

[3] He allowed him 15 months for his plea of guilty and also gave him credit of 9 months for being a first offender. He therefore sentenced him to 2 years imprisonment.

[4] I can find no fault with the deductions the learned Judge made from his starting point of 3 years. In my view they show a sympathy for and understanding of the Applicant's position. The Applicant has made written submissions which state first that the learned Judge erred in law in starting with a 2 year tariff before analysing the facts of the case, he failed to consider the prompt guilty plea, that he ignored the New Zealand Court of Appeal Decision in **R -v- Smith** [1980] 1NZLR 412, ignored the fact that the drug found in his possession was for personal use only and was a first offender on a drug-related offence. In fact the Judge started with a three year tariff.

[5] In **R -v- Smith** the New Zealand Court of Appeal considered the pattern of sentencing in cannabis-dealing cases for the period 1975-1980. The facts in Smith were different from those in the present case and whilst Winter J. said in **Bavesi -v- The State** [2004] FJHC 93 that Smith was still good law in Fiji, this may be so, but now in my view it must be subject to the rider that in 2004 Parliament passed the Illicit Drugs Control Act 2004 which came into force on the 7th of July 2004, that is nearly 3 months later than the decision in Bavesi. The clear purpose of the Illicit Drugs Control Act is to increase the sentences and make more effective the policing of offences relating to the acquiring, supply, possession, manufacture, cultivation or administration of Illicit Drugs. This is borne out by the title to the Act which states that:

> ***"it is to regulate and control the cultivation, manufacture, importation, exportation, sale, supply, possession and use of illicit drugs and controlled chemicals and for related matters".***

[6] Section 5(a) under which the Applicant was convicted provides a penalty of a fine not exceeding $1million or imprisonment for life or both for anybody illegally in possession of an illicit drug.

[7] It follows that the sentence of 2 years imposed by Govind J. is well within the range of sentences allowable under Section 5(a). A reading of the cases here shows that the maximum sentence range for being in possession of drugs of a weight up to 1,000gms is from 1 to 5 years. Thus, in **State -v- Luse Helu** Criminal Case No. HAC 034 of 2006S Shameem J. on the 28th of August 2006 sentenced the Accused to a term of 18 months imprisonment for being in possession of 291.2gms of cannabis sativa. Consequently, a sentence of 2 years for being in possession of nearly four times that amount cannot be said to be unreasonable.

[8] I consider that the sentence imposed by Govind J. was very reasonable in the circumstances and consequently I refuse leave to appeal.

FIJI COURT OF APPEAL

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[John E. Byrne]

JUDGE OF APPEAL

At Suva

22nd January 2008