

IN THE HIGH COURT OF FIJI
AT LAUTOKA
CRIMINAL JURISDICTION

CRIMINAL CASE NO.: HAC 225 OF 2011

STATE

-v-

AINARS KREIMANIS

Counsels : **Mr. T. Qalinauci for the State**

Accused in person

Date of Trial : **24 September - 02 October 2013**

Date of Sentence : **15 October 2013**

SENTENCE

1. You are before the Court for sentence, after being convicted to the following charge.

Statement of offence

UNLAWFUL POSSESSION OF ILLICIT DRUGS: Contrary to Section 5 (a) of the ILLICIT DRUGS CONTROL ACT of 2004.

Particulars of Offence

AINARS KREMANIS on the 11th day of November 2011 at **NADI** in the **WESTERN DIVISION**, without lawful authority, was found in possession of illicit drugs, namely **METHAMPHETAMINES** weighing 5,627.9 grams or 5.6279 Kilograms.

2. You pleaded not guilty to above charge. Following trial lasting seven days in this Court you were found guilty on above count against you.
3. After considering the unanimous verdict of Guilty of the assessors and having reviewed the evidence and summing up in this trial, the Court concurred the verdict of the assessors and found you guilty of the above charge.
4. The following facts were proven in evidence during the trial. You entered into Fiji on 11.11.2011 from Nadi International Airport carrying a brown suit case. When custom officers searched this suitcase, they found 5.6279 Kg of Methamphetamines concealed in four picture frames. The Drug was confirmed to be Methamphetamines by the Forensic evidence which is an agreed fact.
5. From the evidence it is clear that you had entered this country with knowledge of this drug hidden in those four pictures.
6. You had no remorse for your above conduct.
7. According to the Illicit Drugs Control Act the maximum punishment for Possession of Illicit Drugs is a fine not exceeding \$1,000,000 or Imprisonment for life or both. It is a serious offence.
8. The tariff for possession of Illicit Drugs is well settled since the Judgment of **Sulva v State** [2012] FJCA 33; AAU 0093.2008 (31 May 2012) where the Court of Appeal laid down the tariff for possession of Cannabis. It was held that possessing of 4000g and above of cannabis Sativa, tariff should be a sentence between 7 to 14 years imprisonment.
9. **In re Koroi** [2012] FJHC 1029; HAR 002-006.2012 (20 April 2012), Justice Madigan had held that appropriate starting point of sentence for possession of very large quantities (5 Kg or more) could be custodial sentences in the range of ten to fifteen years.
10. In **State v Balaggan-Sentence** [2012] FJHC 1147:HAC 049.11 (4 June 2012) Justice Goundar had held:

“When sentencing drug-smugglers, regard must be made to the circumstances that exist in Fiji. Fiji does not have a sophisticated intelligence service to detect drug-smuggling. Our border security measures are not apt to deal with sophisticated drug-smuggling.”

Unless there is a tip off, it is easy to sneak in and out, hard drugs. In all cases, the hard drugs were for the overseas market. So Fiji is just being used by the drug-smugglers as a transit point for the reasons I have mentioned. Any punishment for dealing in hard drugs must therefore reflect the vulnerability of Fiji becoming a hub for the international drug-smugglers.”

In this case sentence 11 ½ years with non parole period of 9 years was ordered for a count of attempted importation and possession of 521.6 grams of Cocaine.

11. In **State v Lata** [2013] FJHC 136; HAC 83.2010 (25 March 2013) Justice Thureirajah imposed 18 years imprisonment with 16 years as non parole period for a count of possession of 1990.4 grams of Cocaine. He had taken up the view that when there is a possession, trafficking of commercial quantity the tariff should be between 15 years to 20 years.
12. In **R v Fatu** [2006] 2NZLR 72 (CA) it was held that sentencing brand for cases involving the sale or supply of methamphetamine of very large commercial quantities (500 g or more) is ten years to life imprisonment.
13. In the same case the Crown had submitted the following position:

“Methamphetamine abuse can fairly be characterized as the most serious drug problem the country faces at present. The various ways in which the drug threatens the community are well-known. Methamphetamine is a particularly destructive drug for users; it is highly addictive with profound mental and physical side-effects. It induces aggressive and irrational behavior, and is regularly responsible for other offending involving extreme violence, a phenomenon not commonly associated with other drugs. It has created a thriving industry, in which organized crime is heavily involved at all levels. The manufacturing process is particularly dangerous. It is submitted, with respect, that if it is appropriate to draw any distinction between Class A drugs, methamphetamine can fairly lay claim to a place in the most serious category.”

14. In **R v Arunguren** (1994) 99 Cr App R(S) 347 it was held by Lord Chief Justice Taylor that:

*“Instead of using the factor of monetary value of such hard drugs, as heretofore, the new yardstick for measuring the relative significance of any seizure of class A drugs was by weight rather than the street value. Thus for the guidelines laid down in **Bilinski** (1988) 86 Cr. App.R. 146 following should be substituted: where the weight of the drugs at 100 per cent purity was of the order of 500 grammes or more, sentences of 10 years imprisonment and upwards were appropriate. Where the weight at 100 per cent purity was of the order of five kilogrammes or more, sentences of 14 years or more were appropriate.*

15. The State had failed to submit any acceptable material on the medical or social effects of methamphetamines. However I am guided by the above mentioned authorities.

16. There is no tariff in Fiji set out for the possession of Methamphetamines. However considering all above authorities, I am of the view that tariff of 10 to 16 years imprisonment is justified for quantity of more than 5 kg.

17. Considering the above, I commence your sentence at 14 years imprisonment.

18. Aggravating factors;

- (a) The weight of the illicit drug-5.6279 Kg
- (b) How the drug was concealed in picture frames

Considering all, I increase your sentence by 2 years now the sentence is 16 years imprisonment.

19. Mitigating circumstances

- (a) You are first offender
- (b) Family depending on you and you are father of two children

Considering all, I reduce 1 year from your sentence now your sentence is 15 years imprisonment.

20. You are in remand since 11.11. 2011 for a period of 23 months. I deduct 23 months from your sentence. Now your sentence is 13 years and 1 month.

21. Considering Section 18 (1) of the Sentencing and Penalties Decree, I impose 12 years as non parole period.
22. You are sentenced to 13 years and one month imprisonment. You will not be eligible for parole until you complete serving 12 years of imprisonment.
23. The drugs are to be destroyed within 14 days after photographs are taken and a report to that effect made to this court.
24. 30 days to appeal to Court of Appeal.

Sudharshana De Silva
JUDGE

15th October 2013
At Lautoka

Solicitors for the State:
Solicitors for the Accused:

Office of the Director of Public Prosecution
In Person