

IN THE HIGH COURT OF FIJI
AT LABASA
APPELLATE JURISDICTION
CRIMINAL APPEAL CASE NO: HAA 001 OF 2015LAB

BETWEEN: SERU NAIBUKANISA MAITOGA

APPELLANT

AND: THE STATE

RESPONDENT

Counsels : Mr. M. Fesaitu for Appellant
Mr. L. Fotofili for Respondent

Hearing : 11 December, 2015

Judgment : 15 December, 2015

JUDGMENT

1. On 22 April 2015, the appellant, in the presence of his counsel, pleaded guilty to the following charge, in the Savusavu Magistrate Court:

Statement of Offence

FOUND IN POSSESSION OF DANGEROUS DRUGS: Contrary to section 5 (a) of the Illicit Drugs Control Act 2004.

Particulars of Offence

SERU NAIBUKANISA MAITOGA, on the 5th day of January, 2015, at Savusavu in Northern Division was found in possession of 3kg of an illicit drug namely Marijuana botanically known as Cannabis Sativa.

2. The prosecution's summary of facts were read to him, and he admitted the same. Briefly, they were as follows. The police raided his house on 5 January 2015. A black leather case containing 3kg of cannabis sativa dried leaves were found in his house. It appeared he admitted the same was his.
3. Plea in mitigation were taken and the court delivered it's written sentence on 3 June 2015. It sentenced the accused to 4 years 2 months imprisonment, with a non-parole period of 3 years imprisonment, effective forthwith. The appellant (accused) made no complaint about his conviction. However, he was not happy with his sentence. He appealed against his sentence on the following ground:-
 - (i) The Learned Sentencing Magistrate erred in Law and in principle when he fixed a non-parole period close to the head sentence.
4. On 11 December 2015, I heard both parties verbally in court. On the appellant's behalf, his counsel said they had no complaint about the 4 years 2 months imprisonment. He complained that the 3 years non-parole period does not allow for rehabilitation. He suggested a 2 years non-parole period would be more appropriate. When pressed by the court whether or not the 3 years non-parole period was wrong in law, he said the same was not wrong in law.
5. Counsel for the respondent asked that the appeal be dismissed as it was misconceived. He said 4 years 2 months imprisonment was within the tariff set by the Court of Appeal's decision in **Sulua v State** [2012], Criminal Appeal No. AAU 0093 of 2008, and the same was at the lower end of the tariff. The tariff was a sentence between 3 to 7 years imprisonment. Counsel for the respondent said, the sentence encouraged the appellant's rehabilitation, because it was at the lower end of the tariff.

6. I have carefully looked at sections 18 and 19 of the Sentencing and Penalties Decree 2009, to find out whether or not the appellant's ground of appeal against sentence was justified. Firstly, the appellant's counsel had admitted that the 3 years non-parole period was not wrong in law. Secondly, section 18 (4) of the Sentencing and Penalties Decree 2009 permitted non-parole period to be set right up to 6 months before the sentence. Thus, in this case, there was nothing wrong with the Magistrate Court setting the non-parole period at 3 years imprisonment from the sentence of 4 years 2 months imprisonment. There was a gap of 1 year 2 months between the sentence and the non-parole period, and this was permissible under section 18 (4) of the Sentencing and Penalties Decree 2009.
7. For the above reasons, the appellant's appeal against sentence is dismissed.


Salesi Temo
JUDGE



Solicitor for Appellant : Office of Legal Aid Commission, Labasa
Solicitor for Respondent : Office of Director of Public Prosecution, Labasa