



2. On 29 August 2018, in the presence of his counsel, the appellant pleaded guilty to the following charges in the following cases:

(i) **Nasinu Magistrate Court Criminal Case No. 1316/17**

*“Statement of Offence (a)*

**FOUND IN POSSESSION OF ILLICIT DRUGS:** *Contrary to section 5 (a) of the Illicit Drugs Control Act No. 9 of 2004.*

*Particulars of Offence (b)*

JAYKRISH SHELVIN SINGH on 6<sup>th</sup> day of December, 2017 at Caubati, Nasinu in the Central Division was found in possession of 0.01 grams of Methamphetamine.”

(ii) **Nasinu Magistrate Court Criminal Case No. 1155/18**

*“Statement of Offence (a)*

**FOUND IN POSSESSION OF METHAMPHETAMINE:** *Contrary to section 5 (a) of the Illicit Drugs Control Act No. 9 of 2004.*

*Particulars of Offence (b)*

JAY KRISH SINGH on the 9<sup>th</sup> day of July, 2018 at Nasinu in the Central Division, without lawful authority had in his possession 1 x clear zip lock plastic containing Methamphetamine of total weight of 0.9 grams.”

3. The records appear to say, in both cases that, the charges were read and explained to the appellant, and he appeared to have understood the same. He then pleaded guilty to both charges out of his own free will. The summary of facts were presented in court by the prosecution. In Criminal Case No. 1316/17, the learned Magistrate recorded the facts as follows:

“On the 6<sup>th</sup> day of December, 2017 at about 1745 hours at Cakacaka Road, Caubati, Nasinu in the Central Division,

without lawful authority, you had in your possession a total weight of 0.01 grams of methamphetamine. D/Cpl 4654 Tabalailai saw you inside a private car parked at your residence. You were searched and they found some white crystal substance inside a plastic bag on you which was tested positive with the total weight of 0.01 grams.”

4. In Criminal Case No. 1155/18, the learned Magistrate recorded the facts as follows:

“On the 9<sup>th</sup> day of July, 2018 at about 1032 hours at Kanace Road, Nasinu in the Central Division, without lawful authority, you had in your possession 1 x clear zip lock plastic containing methamphetamine of total weight of 0.9 grams. D/Cpl Daniele and Constable Viniana raided 1 x car registration number IY 645 in which you were sitting on the driver’s seat and were found in possession of 1 x clear zip lock plastic containing white substance which was tested positive with the total weight of 0.9 grams and a wallet containing \$515.00.”

5. Through your counsel, you admitted the above summary of facts. The Learned Magistrate then found you guilty as charged on the above charges and convicted you accordingly on both charges. You later, through your counsel, submitted your plea in mitigation. On 16 October 2018, the Learned Magistrate sentenced you to 19 months 14 days imprisonment on each file, both to be made concurrent to each other.

6. You were not happy with the sentence. You filed the following grounds of appeal on 13 November 2018:

**“Grounds of Appeal Against Sentence**

- a. The Learned Magistrate erred in law and in fact at paragraphs 9 & 10 of Sentence when she stated that “there has been a drastic increase in possession of methamphetamine in the society” as aggravating factor and added further 12 months imprisonment term when in fact there was no evidence that the Appellant was

supplying and/or selling methamphetamine to the public.

- b. The Learned Magistrate erred in law and in fact in not giving sufficient weight and discount for the mitigating factors submitted by the Appellant.
- c. The sentence handed down by the Learned Magistrate is harsh and excessive.
- d. The Appellant reserved the right to file further grounds of appeal after the receipt of copy records.”

7. I will now deal with the above grounds of appeal.

**Sentence Appeal Ground (a):**

8. In paragraphs 8, 9, and 10 of her sentence remark, the Learned Magistrate said the following:

“8. After considering the relevant provisions of the Sentencing and Penalties Act and the relevant case authorities, I select 24 months imprisonment term (Band 1 possession).

9. I consider the aggravating factor in this matter as such that there has been a drastic increase in possession of methamphetamine in the society.

10. In view of the above aggravating factor, I add 12 months and your sentence stands now at 36 months imprisonment term.”

9. The appellant, in sentence appeal ground (a), complained that “the Learned Magistrate erred in law and in fact at paragraphs 9 and 10 of (her) sentence when she stated “there has been a drastic increase in possession of methamphetamine in society” as aggravating factor and added further 12 months imprisonment term when in fact there was no evidence that the Appellant was supplying and/or selling methamphetamine to the public.” I have

read the court record and the Learned Magistrate's sentencing remarks to find out whether or not the above complaint was justified. On the prosecution's summary of facts given to the court, on both cases, there was no evidential basis for the Learned Magistrate to hold the view that "there has been a drastic increase in possession of methamphetamine in society". Had the Learned Magistrate referred to some similar cases in the Magistrate Court to justify her conclusion on the same, and taken judicial notice of the same, then her views, as stated above, may be justified. However, she did not do so in this case, and as a result, there was no evidential basis in this particular case to hold such a view. I therefore allow this ground of appeal, and re-calculate the sentence as shown below.

10. I agree with the Learned Magistrate's starting point of 24 months imprisonment, which was in line with the guidelines in paragraph 6, Band One of State v Sera Vakula, Criminal Case No. HAC 247 of 2016S, High court, Suva, page 3. I find the following as mitigating factors, that is, he was a first offender at 32 years, he co-operated with police, he was remanded in custody for 14 days and pleaded guilty 8 months after first call in Criminal Case No. 1316/17 and 1 month after first call in Criminal Case No. 1155/18. I deduct 1 month for time already served while remanded in custody for 14 days, leaving a balance of 23 months. For being a first offender, I deduct 5 months, leaving a balance of 18 months. For pleading guilty, I deduct another 5 months, leaving a balance of 13 months. Lastly, for co-operating with police, I deduct 1 month, leaving a balance of 12 months imprisonment. In Criminal Case No. 1316/17, I sentence the appellant to 12 months imprisonment, to run from 16 October 2018.
11. For Criminal Case No. 1155/18, the above process and sentence is repeated and the final sentence of 12 months imprisonment is to run from 16 October 2018. The sentences in Criminal Case No. 1316/17 and Criminal Case No. 1155/18 are to be concurrent to each other, leaving a final total sentence on both cases a sentence of 12 months imprisonment, to run from 16 October 2018. The appeal against sentence succeeds to the extent explained above.

12. Because of the above, it is unnecessary to decide the other appeal grounds. The other appeal grounds are accordingly dismissed.



**Salesi Temo**  
**JUDGE**

**Solicitor for Appellant** : **Kohli and Singh, Barristers & Solicitors, Suva.**  
**Solicitor for Respondent** : **Office of the Director of Public Prosecution, Suva.**