

**IN THE MAGISTRATES' COURT OF FIJI  
AT TAVUA  
CRIMINAL JURISDICTION**

Criminal Case No: 245 – 2015

**STATE**

-v-

**APISAI NATINAVOU**

Before : RM Fotofili L.  
For Prosecution : Sgt Priya P. [ Police Prosecution ]  
For Defendant : In Person, Waived Right To Counsel  
Voir Dire Hearing : 24<sup>th</sup> November 2020  
Voir Dire Ruling : 24<sup>th</sup> January 2022  
Date of Judgment : 22<sup>nd</sup> February 2022  
Date of Sentence : 28<sup>th</sup> February 2022

**SENTENCE**

**BACKGROUND**

1. **APISAI NATINAVOU**, you initially pleaded not guilty to the following charge:

Statement of Offence

**UNLAWFUL CULTIVATION OF AN ILLICIT DRUG**: Contrary to section 5 (a) of the Illicit Drugs Control Act 2004.

Particulars of Offence

**APISAI NATINAVOU**, on the 24<sup>th</sup> day of July, 2015, at Vatukoula in the Western Division was found cultivating 24 plants of Cannabis Sativa or Indian Hemp, an illicit drug, weight 783.6 grams.

2. You disputed that you gave your answers to police voluntarily when they formally interviewed you under caution.
3. After a *voir dire* hearing or enquiry, I found that you did give your answers voluntarily to police during your interrogation.

4. The matter was fixed for trial and during the trial after finding that there was a case to answer against you, you admitted that you were looking after or tending to the plants and you said that you are pleading guilty. You also admitted that the answers in your police interview is true.
5. Your plea and admission in court and the evidence tendered particularly your police interview, supports your belated guilty plea and admission. I am satisfied that you understand the consequence of your plea.
6. I also do not find or I am not convinced on a balance of probabilities that you had any lawful authority or justification to be cultivating the plants.
7. I find you guilty and convict you of the charge accordingly.
8. On the 23<sup>rd</sup> of October 2015, a team of police officers went to Nadelei village, Vatukoula to investigate a suspected case of illicit drugs or cannabis. You were a suspect regarding that report. When police arrived, a search was conducted on a 'farm' at a nearby hill close to the village. Some plants believed to be cannabis were seen at the farm. These plants were already uprooted. 4 plants from the same batch of plants, had been provided to police earlier by an informant. Altogether, there were 24 plants. All these plants were taken for analysis and the forensic chemistry or science officer verifies that they test positive for being Indian Hemp botanically known as Cannabis Sativa. The plants height range between 20 cm to 80cm with a total weight of 783.6 grams.
9. You were not arrested on that same day when police conducted the search or raid on the farm, as you had ran from police. You came a few days later to the Vatukoula Police Station accompanied by your father who convinced you to surrender yourself. You were then interviewed under caution by police.
10. In your police interview, you voluntarily admitted fleeing on horseback when police arrived to conduct the search. You left a bag of green plants believed to be marijuana behind when you had escaped. You accepted uprooting marijuana plants. You admitted burning some plants. You have bartered or bought and sold marijuana before in exchange for farm animals. You showed police where you planted the plants during scene reconstruction.
11. I have already ordered for the destruction of the drugs on the 10<sup>th</sup> of September 2018 pursuant to section 155(1)(b) of the Criminal Procedure Act 2009.
12. You have spent 1 month and 11 days in remand. I will not consider all of this time as time served as you had to be remanded considering your missed appearances in this case.

13. Out of your 1 month and 11 days in remand, I will only consider 21 days as time served and these 21 days will be deducted from your sentence.
14. You have no previous conviction.

#### **LAW**

15. The maximum punishment for possessing or dealing with an illicit drug can be by imposing a fine of up to \$1,000,000 or up to life imprisonment or both a fine and imprisonment.

#### **TARIFF**

16. I am aware of the decision by his Lordship Justice Perera V.S in the High Court case of **Tuidama v State** [2016] FJHC 1027; HAA0029.2016 (14 November 2016). His Lordship drew the difference between the weight of the dried form of cannabis and those where the stem and water content is included as part of the weight. His Lordship also proposed the following tariff for the cultivation of cannabis:
  - a. The growing of a small number of plants for personal use by an offender on a non-commercial basis - 1 to 2 years imprisonment;
  - b. Small scale cultivation for a commercial purpose with the objective of deriving a profit - 3 to 7 years imprisonment;
  - c. Large scale commercial cultivation- 7 to 14 years imprisonment.
17. However, I am inclined to follow the guidelines set by the Court of Appeal which set a tariff applicable according to the weight of the drugs.
18. **APISAI NATINAVOU**, the weight of drugs in your case falls into a category 2 offence according to the Court of Appeal decision in **Sulua v. State** [2012] FJCA 33; AAU0093.2008 ( 31 May 2012 ).
19. The tariff or sentencing preference can be between 1 to 2 years imprisonment if the weight of the drugs is below 500 grams
20. If the weight is more than 500 grams, a sentence of more than 2 years is recommended.

21. The weight in your case is 783.6 grams and therefore the tariff of more than 2 years imprisonment is applicable to you.

#### **INSTINCTIVE SYNTHESIS APPROACH**

22. I will adopt an instinctive synthesis approach when sentencing you.
23. I emphasise the points below before I pronounce your final sentence.

#### **AGGRAVATING FEATURES**

24. There is no direct evidence that you were intending to sell or barter the drugs. However, the circumstantial evidence from your admission in your police interview that you have sold or bartered the drugs before and the amount of the drugs found on you with the rest being burnt or destroyed, make me sure that you intended to sell or barter the drugs. This intention aggravates your offending.
25. You also evaded or escaped from police.
26. Drug offences involving cannabis, is prevalent.

#### **MITIGATION**

27. You are a first offender.
28. You have cooperated with police during your interview but your cooperation must be considered with some reserve as you unsuccessfully challenged the voluntariness of your answers given.
29. I accept you are remorseful and this too must be considered with some reserve as you only admitted planting the drugs when on the day of your trial.
30. This case has been looming over you since 2015.

#### **GUILTY PLEA**

31. You did not plead guilty early.
32. You pleaded guilty and admitted the offence when you were in the witness box during your trial.
33. You will still get a discount for pleading guilty belatedly nonetheless.

**SUMMARY**

34. **APISAI NATINAVOU**, your sentence will be aimed at deterrence and is to punish you adequately.
35. You are sentenced to 2 years and 2 months imprisonment.
36. I cannot suspend this sentence whether in part or in whole as it is more than 2 years imprisonment.
37. I will deduct 21 days for your time in remand.
38. This means that you have 2 years 1 month and 7 days imprisonment remaining.
39. It is a requirement that I must fix a non-parole period pursuant to section 18 (1) of the **Sentencing and Penalties Act 2009**. There is no limit as to how low the non-parole period can be set but as long as the non-parole period is 6 months less than the term of the sentence.
40. You are a first offender. You have pleaded guilty although belatedly and you accept responsibility. Your sentence should also deter would be offenders but to punish you adequately in light of the circumstance of your case.
41. Out of the 2 years 1 month and 7 days imprisonment remaining, I order that you serve 1 month and 7 days imprisonment without being eligible for parole.
42. 28 days to appeal.



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**Lisiate T.V. Fotofili**  
**Resident Magistrate**

Dated at Tavua this 28<sup>th</sup> day of February, 2022.