

IN THE SUPREME COURT OF WESTERN SAMOA

HELD AT APIA

CRIM. NOS. S.95/92;  
& S473/92

BETWEEN : THE POLICE

Informant

A N D : SONNY STEHLIN of Vailima

Defendant

Counsel : Ms H.M. Aikman for Prosecution  
Mr R.S. Toailoa for Defence

Hearing : 10 August 1993

Decision (on sentence) : 31 August 1993

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DECISION OF SAPOLU, C.J.

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Now the defendant appears for sentence on two charges namely possession of narcotics and cultivation of narcotics. Now the maximum penalty for both offences is 7 years imprisonment. I must say that the quantity of marijuana involved in this case is the most substantial amount of narcotics involved in any case under the narcotics legislation which has been brought before this Court since my appointment to the Bench.

Much has been said about the reason why the defendant has planted, cultivated and smoked marijuana. That reason is that the defendant suffers from a peptic duodenal ulcer and that the smoking of marijuana relieves the pain that the defendant derives from persistent ulcer. It is clear from the evidence that the defendant was advised by the national hospital to refrain from smoking and drinking because of his ulcer, however, the defendant did not stop smoking after he gave up smoking cigarettes, he changed over to smoking marijuana. The defendant also did not refrain from drinking. That

makes one wonder whether the defendant is truly concerned about his health because if he was, one would have expected him to comply with the advice that was given to him by the national hospital in relation to his ulcer. It is also clear that the defendant has been smoking marijuana for a number of years but that did not cure his ulcer or alleviated the pain that derives from his ulcer. I think the defendant should have known after smoking marijuana for sometime that the pain did not completely go away from his ulcer that the smoking of marijuana was not a remedy for his ulcer.

It is clear from the evidence that whilst the defendant has been smoking marijuana he has also been seeing traditional masseurs to help him with the pain that he was feeling from his stomach. That to me clearly shows that the defendant now ought to have known that marijuana was failing to cure the pain from his ulcer. That also makes one wonder whether the defendant was really smoking marijuana for the purpose of curing the pain in his stomach or that he was smoking marijuana because he likes smoking marijuana. He says that when he smokes marijuana that eliminates the pain he feels in his stomach, but the evidence is clear that marijuana did not remove that pain completely; the pain always came back.

In view of the number of marijuana plants involved in this case, which is 31 and if the defendant says that he planted his marijuana for his own consumption then it must be that he is a very heavy smoker or smoker of marijuana but the national hospital had clearly advised to refrain from smoking. Now the defendant is also a drinker. He was convicted in 1979 for drunkenness. His wife told the Court that he drinks and on the night he was apprehended by the police in front of the Love Boat night club he was drunk. That also makes one wonders whether the defendant is truly concerned about the pain from his ulcer in view of the advices from the national hospital that he should refrain from drinking because of his ulcer.

I have considered the publications counsel for the defendant mentioned in his plea in mitigation. It appears from those publications that there were recommendations for the penalties for narcotic offences to be made lighter than they were at the time but there is no evidence whether the recommendations and the penalties expressed in these publications were accepted and acted upon by the countries in which the recommendations were made. In the case of Western Samoa, there has been no reduction in the maximum penalties imposed under the narcotic act for narcotic offences. If anything, the amendments which have been made to the narcotics act do show that the legislature has serious concern for this kind of offence.

The amendments to the narcotics act do not reflect any attitude on the part of the legislature that the penalties for these kinds of offences should be reduced. As long as the law in narcotics remains as it is, the Court is obliged to enforce the law. Now in mitigation, I take into account of what counsel for the defendant has said as well as what the probation report says and the testimonials which have been submitted on behalf of the defendant. In particular, I accept what counsel for the defendant said that for the purposes of this case, the defendant should be treated as a first offender and that his conviction in 1979 for drunkenness should not be taken into account. I also take into account what counsel said that the defendant has been an outstanding sportsman. He is one of the top jockeys in horse racing that this country has ever had. I also take into account what the probation report says and the testimonials show that the defendant is a good father, a good husband and a reliable and an honest man. It also appears from the testimonials and the probation report that the defendant is a good planter and has the best plantation in the locality where he lives.

Counsel for the defendant also mentioned the case of Police against Aipovi Aiono where this Court sentenced the defendant for the offence of cultivation of narcotics to pay a very heavy fine instead of imposing a term of imprisonment.

While that was the case with the narcotics offence in Police against Aipovi Aiono, I must say that the sentence in each case is primarily determined by its facts and the facts of Aiono Aipovi's case are different from the facts of this case as well as the mitigating circumstances. The case of Aipovi Aiono is the exception. The parole records will show that the sentence for cultivation of narcotics has been imprisonment. Imprisonment has also been imposed for cultivation charges by the Court. In weighing all these matters, I have come to the view that notwithstanding the good record of the defendant as well as the fact that he suffers from peptic ulcer, a term of imprisonment is warranted. On the charge of cultivation of narcotics, the defendant is convicted and sentenced to 2½ years imprisonment. On the charge of possession, the defendant is convicted and sentenced to 12 months imprisonment. Sentences are to serve concurrently.

*T. F. M. Sefalu*

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CHIEF JUSTICE