



IN THE DISTRICT COURT OF NAURU
AT YAREN
CRIMINAL JURISDICTION

Criminal Case No. 17 of 2023

THE REPUBLIC

-v-

JEDIDIAK GADABU

Before: Acting RM Ronald N. Prakash

Republic: Mr. Saif Shah

Accused: Mr. Raynor Tom

Date of Hearing: 8 May 2023

Date of Sentence: 15 May 2023

SENTENCE

Catchwords: Possession of an illicit drug; section 6(a) of Illicit Drugs Control Act; Possession of Cannabis; sentence.

Introduction.

1. The defendant pleaded guilty to one count of possession of an illicit drug contrary to Section 6(a) of and schedule 1 of the Illicit Drugs Control Act 2004 for possessing 26.3 grams of cannabis on 4 May 2023.

2. The Court ordered sentencing submissions to be filed by the counsel for the DPP and the defence counsel and set this matter for sentence hearing on 8 May 2023.
3. Both counsels filed helpful submissions to assist the court and I thank them for that.

SUMMARY OF FACTS

4. The Summary of Facts of the case are as follows;

“On the 7th of April 2023, Jedidiak Gadbu (‘the accused’), 21 years old had arrived into Nauru onboard flight ON002 from Brisbane, Australia. The accused luggage was checked by Giniana Harris (A1) – customs service officer. Upon examining his luggage A1 found an apparatus which raised her suspicion. A1 then handed over the accused to her Supervisor Kresma Cain (A2) – customs supervisor. A1 had handed over an object which was identified by A2 as a ‘Bong’ which is used as a smoking apparatus.

A2 noticed that the apparatus was used which raised her suspicion. A2 then viewed the accused’s arrival declaration card where he had stated that there was nothing to declare. A2 then asked the accused if he had packed his own bag and the accused stated in the affirmative.

A2 observed that the accused was nervous during the questioning. A2 then asked the accused to accompany her to the customs office for a thorough examination of his luggage. At around 7pm the accused’s luggage was examined by A2 in the presence of the accused. A2 extracted an

‘easter egg tube’ and emptied the contents and found a small glad plastic sandwich bag which contained dry leaves.

Customs officials then contacted the Nauru Police Force and officer Rumen Reweru and Kane Rykers arrived at the customs office. Officer Kane Rykers read the rights to the accused and arrested him, the accused was then taken to the Nauru Police Station where he was caution interviewed.

Officer Rumen Reweru tested the seized dry leaves using the Narcotics Identification Kit (NIK), the result tested positive for Cannabis – an illicit drug Officer Reweru then took photographs of the illicit drug, tagged and kept in safe custody at the exhibit room.”

5. The summary of facts was readout and the accused admitted the summary of the facts.

The law

6. Section 6(a) of the Illicit Drugs Control Act provides: -

“Unlawful possession, manufacture, cultivation and supply

A person who without lawful authority;

(a) acquires, sells, supplies, possesses, produces, manufactures, cultivates, uses or administers any illicit drug; or

(b) engages in any dealing with any other person for the transfer, transport, supply, use, manufacture, offer, sell, agree to sell, offer for sale or have possession for sale, import or export of any illicit drug, is guilty of an offence and is liable to imprisonment for 10 years and a fine not exceeding \$50,000.”

Sentencing Considerations and Legal Framework

7. Section 278 of the Crimes Act 2016 provides the purposes for which a court may impose a sentence on an offender, which are as follows:

“(a) to ensure that the offender is adequately punished for the offence;

(b) to prevent crime by deterring the offender and other people from committing similar offences;

(c) to protect the community from the offender;

(d) to promote the rehabilitation of the offender;

(e) to make the offender accountable for the offender’s actions;

(f) to denounce the conduct of the offender; and

(g) to recognise the harm done to the victim and the community.”

8. Section 279 of the Crimes Act 2016 provides for general sentencing considerations as follows:

“(1) In deciding the sentence to be passed, or the order to be made, in relation to a person for an offence against a law of Nauru, a court shall impose a sentence or make an order that is of a severity appropriate in all the circumstances of the offence.

(2) In addition to any other matters, the court shall take into account whichever of the following matters are relevant and known to the court:

- (a) the nature and circumstances of the offence;
- (b) any other offences required or permitted to be taken into account;
- (c) if the offence forms part of a course of conduct consisting of a series of criminal acts of the same or a similar character, the course of conduct;
- (d) any injury, loss or damage resulting from the offence;
- (e) the personal circumstances of any victim of the offence;
- (f) the effect of the offence on any victim of the offence;
- (g) any victim impact statement available to the court;
- (h) the degree to which the person has shown contrition for the offence by taking action to make reparation for any injury, loss or damage resulting from the offence or in any other way;
- (i) if the person pleaded guilty to the charge for the offence, that fact;
- (j) the degree to which the person cooperated in the investigation of the offence;
- (k) the deterrent effect that any sentence or order may have on the person or on anyone else;
- (l) the need to ensure that the person is adequately punished for the offence;
- (m) the character, antecedents, age, means and physical or mental condition of the person;
- (n) the prospects of rehabilitation of the person;
- (o) the probable effect that any sentence or other order under consideration would have on any of the person's family or dependants; or
- (p) if the offence was committed by an adult in circumstances where the offending conduct was seen or heard by a child, other than another offender or a victim of the offence, those circumstances."

Aggravating Circumstances.

9. I consider the defendant's attempt to hide the drug from authorized customs officers prior to the inspection of his bag at the airport to be an aggravating factor.

Personal Circumstances

10. The defendant, a 22 year old with no prior criminal convictions, is a dual citizen of Australia and Nauru and currently resides in Australia. He has recently found employment at a construction company to support his single mother and brother in Australia. Also, the defendant has a promising prospect in the sport of Muay Thai, which has been his childhood interest.

Mitigating Factors.

11. In mitigation the defendant through his counsel provided one written personal reference and called 2 witnesses in support of mitigation. The 2 witnesses in support of the accused were the grandmother of the accused and Reverend Roger Mwareow.

12. The defendant also read in court his written mitigation as follows;

“Your honour, I accept the responsibility of offence that I’ve committed as I understand that possession of Marijuana is still against the law in the Nauru although I hope to gain your understanding and confidence in what I believe is to get a just sentence. As an Australia citizen and resident who’s accustomed to Australian law, I understand that possession of marijuana in some parts of Australia is legal as long as it is a certain amount that is deemed to be of personal use and if that amount is exceeded it will only result in fine. Countries such as in U.S and U.K have also legalized marijuana in some parts and is also accepted in use of both medical and recreational purposes. Australia and New-Zealand also heading in that direction so as a first-time offender with no criminal record, 10 years of imprisonment for carrying marijuana which is for my personal use is simply such harsh and unfair. I also fight for a lenient sentence not only for myself but because my friends and family have suffered enough over my actions for I now realized that true punishment of imprisonment is watching my loved ones carry a heavy burden with me through a unseizing efforts to visit me in the correctional centre, their unwavering support in the court room, their unseizing prayers and many sleepless nights. I was naïve and selfish in opportunities before I did what I did, what was supposed to be a surprise visit to share and enjoy the weekend of Easter with my family turned into four weeks of unbearable stress on certainty and separation, not only have I brought this for my close family in Aiwo but also my loved ones in Buada, Boe, Meneng, Ewa, Nibok, Anetan, U.K and even in Australia and

they all have come have to support me. I do not shy away from my wrongs but I look to erase the standard I put on my name not only on my name but my families' name if given the opportunity. I'm truly remorseful for my actions and only ask for a second chance. Thank you, your honor

13. I find the following to be mitigating circumstances:

- a) You are a first offender;
- b) You expressed remorse by pleading guilty at the first opportunity

Written character reference by Director of Warren Coatings.

14. Lance Warren who is the Manager/Director of Warren Coatings from Queensland Australia provided a written reference about the accused, in his reference Lance warren stated "*Jedidiak Gadabu works for Warren Coatings from November 2022 and found him to be trustworthy and reliable and had no complaints about him and he is well mannered person*".

Oral Mitigation by Grandmother Alvina Harris.

15. The defendant's grandmother gave oral mitigatory evidence on behalf of him, she is 77 years old and is from England, she stated under oath as follows;

"Okay, Registrar, sirs, ladies and gentlemen, my grandson, that's why I'm here for you, God bless you. What I'd like to say is, I'd like to open a prayer which I've already worked it out myself and thought about it so much and so long so if you don't mind I would like to say it.

I would like to say the Lord's prayer because everyone knows that alright?

Our Father, who art in heaven, hallowed be thy name, thy kingdom come, thy will be done on earth as is it in heaven, give us this day, our daily bread and forgive us our trespasses as we forgive those who trespass against us and lead us not into temptation, but deliver us from evil, for thine is the kingdom, the power and glory, forever and ever. Amen

I'm representing my grandson who I love very much and he's my last grandson.

With the evidence of knowing when he was a little boy, when he was born and when he's started growing up, my grandson, he keeps to himself with his mind and character, he's a very quiet grandson, Jedidiak Gadabu and he has a heart of gold. What happened just took us by surprise but can't be helped but we're here to help him out and we're here to tell the truth, nothing but the truth. As a grandmother, he keeps to himself and his character is just out of.... Beyond the characters of what are those grandsons and grandchildren I've known. He's very quiet and he keeps to himself, he keeps his friends closely to his heart, he never dodged anyone but he keeps his friendships whole heartedly and to put it bluntly, this is not character to be quite honest so I as I've said... well I've already explain it, he is of good character and a very very nice grandson, very quiet, very loyal and he never say a bad word about his families, or just there to help them. Always there to help a helping hand so that's all the characteristics I've just laid it out now and if Jesus forgives, so can we, thank you very much."

Oral Mitigation by Reverend Roger Mwareow.

16. Reverend Roger Mwareow also gave oral mitigatory evidence on behalf of the accused, he stated under oath as follows;

"As the church leader for Nauru Congregational Church, I'm so happy and privileged to do the counselling if there's any changes during this court. I noticed and I knew the parents very well as well as the grandmother, they are well dedicated to our church so for the case of this person, I do accept the full responsibility in doing whatever is necessary to help and reform this young youth. Indeed, we are so happy to do part of our job as a counsellor especially to our youths, Nauruan youths, thank you very much".

Type of Sentence.

17. Section 277 of the Crimes Act 2016 outlines the sentencing options available to the court. In addition, I have considered the following sentences delivered in the District Court previously;

i) *"Republic v Perndergast, NRDC; Criminal Case 85 of 2017;*

His Worship Mr. Lomaloma sets out his sentencing for possession of a synthetic drug as follows;

“I have taken account for the purpose of sentencing set out in section 277, 278, 279 and 280 of the Crimes Act 2016 and I consider that a conviction with a fine would be the most appropriate sentence for you. I will give you a stiff fine to make you accountable for your actions and denounce your conduct.”

- ii) *Republic v Debagin Kaiera, NRDC; Criminal Case 73 of 2017;*

His Worship Mr. Lomaloma sets out his sentencing for possession of cannabis as follows;

“I have taken account of the objective seriousness of the offending, and the factors set out in section 279(2) of the Crimes Act 2016 and consider that a custodial sentence is not appropriate. I have considered section 277 of the Crimes Act and the fact a conviction would make it practically impossible for you to leave Nauru and I order that without recording a conviction against you, you pay a fine of \$300 pursuant to section 277(b) of the said Act”.

- iii) *Republic v Bahram Safari, NRDC; Criminal Case 14 of 2018;*

His Worship Mr. Lomaloma sets out his sentencing for possession of cannabis as follows;

“I have taken account of the objective seriousness of the offending, and the factors set out in section 279(2) of the Crimes Act 2016 and consider a custodial sentence is not appropriate. I have considered section 277 of the Crimes Act the fact that a conviction would make it practically impossible for you to leave Nauru and I order that without recording a conviction against you, you pay a fine of \$300 pursuant to section 277(b) of the act”.

- iv) *Republic v Baby Kakiouea and Moana Quadina, NRDC; Criminal Case 38 of 2018;*

The two accused pleaded guilty to one count of possession of an illicit drug, namely cannabis sativa weighing 0.7 grams. The court considering the objective seriousness of the

offence imposed a fine of \$300 without recording a conviction for both accused persons.

- v) *Republic v Baby Kakiouea and Jeremy Dabwido, NRDC; Criminal Case 54 of 2018*

The first accused was a serving prisoner and he was detailed with other inmates to clean up the LinkBelt Oval in Aiwo District. While the first accused was cleaning the second accused drove by in a motorcycle and dropped an item about an inch away from him. A corrections officer observed this and confiscated the item which were later confirmed to be Cannabis sativa.

The District Court imposed a fine of \$300 and recorded a non-conviction.”

18. The counsel for the DPP submitted that a custodial sentence is to be imposed and a conviction must be recorded and does not agree with the sentencing practice that was followed by the District Court previously, and that in light of the Bail (Amendment) Act (No.2) of 2022, the amendment demonstrates the intent of parliament in aligning offences under the Illicit Drugs Control Act 2004 with other offences under Section 4A of the Bail Act.
19. The explanatory memorandum of the Bail (Amendment) Act (No.2) of 2022 states that *“Clause 3 amends Section 4A(a) of the Act to ensure that accused persons who are charged with an offence under the Illicit Drugs Control Act 2004 are not granted bail. This means that they will be remanded in custody until such time they are required to appear before the court for trial. The amendment is intended to prevent the possibility of re-offending by an accused person while on bail”*.
20. In reply to this submission by the counsel for DPP the counsel for the defence submitted that the amendment provision does not apply to this case and in this instance, the court is at the sentencing stage and not dealing with bail.
21. Upon reading the provision of the Bail (Amendment) Act (No.2) of 2022 and having considered the explanatory memorandum, I find that the literal meaning of the relevant provisions under the Bail Act that is being referred to only applies to bail applications.

22. Therefore, I do not see any relevancy of the submissions made by the counsel for the DPP in respect of the amendment to Bail (Amendment) Act (No.2) of 2022.

Imprisonment.

Section 280 of the Crimes Act outlines the factors that the court needs to consider when considering an imprisonment

“A sentence of imprisonment may be imposed on a person only if:

(a) in the opinion of the court:

(i) the person has shown a tendency to violence towards other people;

(ii) the person is likely to commit a serious offence if allowed to go at large;

(iii) the person has previously been convicted of an offence punishable by imprisonment;

(iv) any other sentence would be inappropriate having regard to the gravity or circumstances of the offence; or

(v) the protection of the community requires it; or (b) a sentence of imprisonment is necessary to give proper effect to Sections 278 and 279.”

23. You have not demonstrated any tendency for violence towards others, and you have no prior convictions for violent offenses. As a result, I do not perceive you as a threat to the community if allowed to go free. After considering the provisions of sections 280 and 279 of the Crimes Act, I believe that a custodial sentence is not necessary in your case.

Sentence

24. Also, I have taken into account section 277 of the Crimes Act. The fact that a conviction could jeopardize your citizenship status in Australia, coupled with your young age and the long journey ahead in your life, indicates that a conviction would have serious repercussions on your future.

25. The usual sentences imposed by this court for offenses under Section 6(a) of the Illicit Drugs Control Act tend to be a non-conviction coupled with a fine around \$300. However, after considering the circumstances of this case


and the aggravating factors, I have decided to impose a higher fine to serve as a deterrent for those contemplating bringing drugs into Nauru.

26. Nevertheless, having considered your personal circumstances and mitigating factors, particularly the repercussions you may face as a result of a criminal record, I decide not to record a conviction against you.

Orders

27. Accordingly, I make the following orders:

- a) Without recording a conviction, you are fined in the sum of \$3000.00;
- b) 30 days to pay the fine or in default 3 years of imprisonment;
- c) 21 days to appeal;
- d) Police to destroy the drugs once the fine is paid.


.....
Ronald N. Prakash
Acting Resident Magistrate

