

IN THE COURT OF APPEAL OF TONGA
CRIMINAL JURISDICTION
NUKU'ALOFA REGISTRY

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AC 12 of 2018

[CR 83 of 2017]

[Signature]
13/04/19

BETWEEN : SIAOSI HELU

- **Appellant**

AND : REX

- **Respondent**

Coram : Handley J
Blanchard J
Randerson J

Counsel : Appellant in person
Mr. A. Kefu SC & Mr. T. 'Aho for Respondent

Hearing : 12 April 2019

Date of Judgment : 17 April 2019

JUDGMENT OF THE COURT

- [1] The appellant Mr. Helu was convicted after jury trial before the Lord Chief Justice on one count of possession of a Class B drug, namely 39.65grams of cannabis. He was sentenced on 7 September 2018 to 18 months imprisonment but has been released on bail pending his appeal to the Court against conviction. There is no appeal against sentence.

The Voir Dire Rulings

- [2] Shortly before his trial, Mr. Helu successfully challenged the validity of a search warrant executed at his residence on 22 April 2017. In the course of the search on that occasion the cannabis the subject of the charge was found in Mr. Helu's possession. The Lord Chief Justice ruled on 8 August 2018 that the search was unlawful. He ordered that the evidence of the search and what was found was not admissible at Mr. Helu's trial.
- [3] The Lord Chief Justice also ruled that Mr. Helu's confessional statements made to the police one and a half days after his arrest during the search were made voluntarily and were not the result of any inducement. The Judge had heard evidence during the voir dire from police officers, Mr. Helu and his mother. He found that Mr. Helu did not impress as a reliable witness; did not sustain any or any significant injury during the search; he was not threatened by the police; and that it was "probably unlikely" that Mr. Helu confessed because he wanted to be released.

The Trial

- [4] In consequence, Mr. Helu was tried solely on the basis of his written confession to the police in which he admitted to possession of the cannabis as charged. Mr. Helu also gave evidence at trial including an account of what he said happened to him at the time of his arrest.

The Appeal

- [5] Mr. Helu's essential complaint as outlined in his notice of appeal is that his trial was unfair because the jury was not presented with all the evidence about the circumstances of his arrest and the drugs found. During the hearing of the appeal we pointed out to Mr. Helu that the prosecutor was unable to present this evidence because he (Mr. Helu) had successfully applied to have it excluded. We also made the obvious point that if the police had been permitted to present this evidence, the case against Mr. Helu would have been even stronger.
- [6] Given that Mr. Helu's concerns were entirely of his own making, he cannot complain of unfairness. We also reject his submission that his lawyer in the Supreme Court was not authorised to apply to have the evidence excluded. Mr. Helu gave evidence at the voir dire and this submission is impossible to sustain.
- [7] A final point raised by Mr. Helu was that the interviewing officer PC Feki was not called to give evidence. Rather PC Tapueluelu gave evidence and produced Mr. Helu's record of interview, the statement of charge form and his voluntary statement admitting the offence. The officer confirmed he was present during the interview. There is nothing in this point.

Result

- [8] We are satisfied there was sufficient evidence before the jury to sustain the conviction and that there was no unfairness in Mr. Helu's trial that could have led to a miscarriage of justice.
- [9] The appeal is dismissed. Bail is revoked with immediate effect. Mr. Helu must surrender himself to serve his sentence.



K. Handley

Handley J

J. Blanchard

Blanchard J

A. Randerson J

Randerson J