

IN THE COURT OF APPEAL OF TONGA
NUKU'ALOFA REGISTRY

AC 19 of 2015

[AM 27 of 2014]

Mr. Kefu

Sean's file

[Signature]
08/04/16

BETWEEN : TANIELA TAPUELUELU - Appellant

AND : POLICE - Respondent

Coram : Moore J
Handley J
Blanchard J
Tupou J

Counsel : Mr S. Tu'utafaiva for the Appellant
Mr 'A. Kefu SC for the Respondent

Date of Hearing : 1 April, 2016

Date of Judgment: 8 April, 2016

JUDGMENT OF THE COURT

- [1] This is an appeal by the defendant, a police officer, from the sentences imposed by the Lord Chief Justice who allowed an appeal by the Police from the decision of a Magistrate. The appellant had pleaded guilty before the Magistrate to two charges of causing grievous bodily harm to different victims contrary to s.107 of the Criminal Offences Act. On 28 August 2014 the Magistrate discharged the appellant without conviction pursuant to s.204 of the Criminal Offences Act.
- [2] The Police appealed on the ground that the sentence was manifestly inadequate. The appeal to the Supreme Court was brought pursuant to s.74(1) of the Magistrates Courts Act which enables any party to appeal. That section and section 80 provide for a full appeal on fact and law and the Supreme Court may review the exercise of the Magistrate's sentencing discretion on familiar principles: *House v The King* (1936) 55 CLR 599.
- [3] On 21 May 2015 the Lord Chief Justice allowed the appeal, convicted the appellant on both charges and adjourned the further hearing for submissions on sentence. On 21 July 2015 he sentenced the appellant to imprisonment for one year ten months on the first charge

and one year and four months on the second. The sentences were to be served concurrently but he suspended both on conditions which included 12 months probation and 100 hours of community service. The sentences of imprisonment were below the two year threshold in s.23 of the Constitution. In the result the appellant's continuing employment with Tonga Police Service and the benefits from his 30 years prior service were not directly affected, although disciplinary proceedings are pending awaiting the decision of this Court.

[4] The defendant appealed to this Court against the convictions entered by the Lord Chief Justice and the sentence. His grounds of appeal allege error in failing to give sufficient weight to mitigating factors in imposing sentences that were excessive and because the Lord Chief Justice was not given the full facts relating to the offences.

[5] Section 74(2) of the Magistrates Courts Act provides:

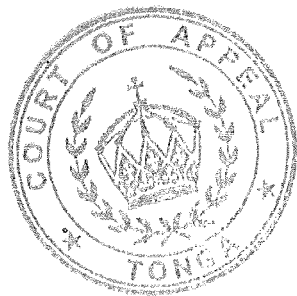
"Any party to any appeal under subsection (1) shall have a further right of appeal on a point of law to the Court of Appeal with the leave of the Supreme Court or the Court of Appeal."

[6] There is a corresponding provision in s.16(c) of the Supreme Court Act which requires the leave of the Court of Appeal for an appeal against the sentence passed on a person convicted on a trial before

the Supreme Court. The proceedings before the Lord Chief Justice were an appeal from the decision of a Magistrate, and not a trial. The relevant provision in s.74(2) of the Magistrates Courts Act.

[7] In our judgment none of the grounds of appeal raise a question of law. Leave to appeal should be refused and the appeal dismissed. However in our opinion the sentences were not at all excessive. The Lord Chief Justice took into account the response of the victims' families to the apologies offered by the appellant. While this was a relevant factor on sentence, its weight and the final decision remain the responsibility of the sentencing court: *Ta'ani v Police* [1994] Tonga L.R 84, 85; *Uluilata v The Crown* [1999] Tonga L.R. 166; *The Crown v Saafi* [2004] Tonga L.R. 250, 254.

[7] The appeal is dismissed.



Moore J

Handley J

Blanchard J

Tupou J