

IN THE COURT OF APPEAL OF TONGA

CRIMINAL JURISDICTION

AC 4 of 2014

NUKU'ALOFA REGISTRY

[CR149 of 2008]

BETWEEN : 'ALAMONI MAKAFILIA

- Appellant

AND : REX

- Respondent

Coram : Salmon J
Blanchard J
Ward J

Counsel : Mr 'O. Pouono for the Appellant
Mr S. Sisifa for the Respondent

Date of Hearing : 31 March 2014

Date of Judgment: 9 April 2014

JUDGMENT OF THE COURT

- [1] The appellant pleaded guilty on the 8th March 2012 to counts of conspiracy to commit armed robbery, armed robbery and housebreaking.
- [2] On the 23rd March 2012 he was sentenced by Shuster J to concurrent sentences of 6 years on the conspiracy charge, 15 years on the robbery charge and 5 years for housebreaking. The judge suspended the last 2 years of the 15 year sentence.
- [3] In January 2014 leave was sought to appeal out of time against the above sentences on the ground that the total sentence was manifestly excessive. Leave to appeal was granted by the President of this Court.

Summary of facts

- [4] In March 2008 the appellant and 3 co-accused made plans to rob a house at Tofoa. Around midnight they broke into the house with their faces covered and wearing hoods. The appellant and one other participant carried rifles. They cut the phone lines to the house and gathered the occupants, including 6 children, in one

room. The appellant stood guard threatening to injure them, while the others stole a number of items of a total value of \$15640. They put the goods in the householder's vehicle and drove off, later leaving the vehicle at Halaliku.

- [5] The appellant was arrested and bailed. He breached bail and fled to Fiji. Almost 4 years later he was deported back to Tonga and arrested. Upon arraignment on the charges he promptly pleaded guilty.

The Judge took 20 years as his starting point for sentencing and reduced that by 5 years for the appellant's plea of guilty.

- [6] The appellant was 21 years of age at the time of the offending. He had one minor and one more serious previous convictions.

Discussion

- [7] The Crown agreed that the sentence was manifestly excessive particularly in relation to the sentences imposed on two of the co-offenders. One, who was carrying the other firearm, was sentenced to 10 years in prison. He had a more extensive record of previous offending. He was also sentenced to 6 months imprisonment

relating to a previous suspended sentence. Another co-offender (the appellant's brother) was sentenced to 5 years imprisonment.

[8] Counsel for the appellant pointed out that the starting point of 20 years was in fact the maximum sentence for the most serious of the offences. He submitted that 8 years was an appropriate sentence with the last 2 years suspended.

[9] For the Crown Mr Sisifa referred to the sentences imposed on co-offenders and to other comparable sentences and submitted that the final appropriate sentence was in the range of 6 – 7 years.

[10] The aggravating features of this offending are the carrying of a firearm, the planning and premeditation, holding the victims hostage at gun point and the absconding to Fiji.

[11] Mitigating features are the plea of guilty, his remorse expressed in a letter he wrote to the Court and his relative youth at the time of offending. It seems that he was younger than the 2 offenders referred to above.

[12] In our view the aggravating and mitigating feature balance each other and accordingly we conclude that the appropriate term of imprisonment is 7 years.

[13] Referring to the judgment of this Court in *Mo'unga v R* [1998] Tonga LR 154 we do not consider that the appellant falls within any of the categories enumerated therein. We decline to suspend any part of the sentence.

Result

[14] The appeal is allowed. The sentence of 15 years for robbery is quashed and replaced with a sentence of 7 years imprisonment. The other sentences remain in place and all are to be served concurrently.



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Salmon J

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Blanchard J

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Ward J