

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

CR.APP.582/98

BETWEEN : PEVINI ULAKAI : Appellant

AND : POLICE DEPARTMENT : Respondent

BEFORE THE HON. CHIEF JUSTICE LEWIS

COUNSEL

Date of Hearing :

Date of Judgment : 18th May, 1998

JUDGMENT

This is an Appeal against sentence. It is suggested that the Magistrate erred when he ignored the plea in mitigation from the Appellant. The fact is that the owner of the carpet which he took, were relatives, who had failed to pay his weekly wage. If what the Appellant says is correct then he may well have had a defence, to the charge since theft is defined as being a "dishonest taking without colour of right." Clearly the Magistrate did not turn his mind to the possibility of the defence he should have. I am assured, that the rightful owner of the carpet has being compensated for the loss of the goods.

The Crown takes no strong position as to the maintaining of the Magistrates sentence. It would seems to me that has admitted previous convictions are irrelevant there over 20 years old.

Sometimes its not said by Magistrate who is engaging in sentencing that he taking a particular matter into account. He clearly did not take into account that he had the option to suspend the operation of the sentence in this case. I have said on previous occasions in this Court that Magistrates have an obligation to make themselves clean what imposing sentence.

I can only assume that the Magistrate thought it was too serious a matter for him to suspend. That is his right and if it was a factor, than he was quite entitled not to suspend the sentence. If he is to take this course (a very serious course) to deprive a man of his freedom, he should have made absolute plain and said so.

He failed to do that. While it is not for this Court to substitute its own point of view about what an appropriate sentence is, this being so serious a matter that I propose to suspend the operation of then sentence of 2 months for 1 year and allow the Appeal.

I take into account that the Defendant is in a position of considerable responsibility to his three young children. He is a sole parent to them. And he has sole responsibility for their welfare. He says he had a good reasons for taking a carpet for he had not been paid proper wages. The Magistrate did not turn his mind to the issue of suspension. This Appeal must be allowed.

IT IS ORDERED THAT:-

- 1. The sentence of imprisonment be suspended for one year.
- 2. There be no order as to costs.

NUKU'ALOFA 18th May, 1998



[Handwritten Signature]
CHIEF JUSTICE