

**IN THE SUPREME COURT OF TONGA
APPELLANT JURISDICTION
NUKU'ALOFA REGISTRY**

CROWN LAW

AM 21 of 2016

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BETWEEN: POLICE - Appellant

AND: TEVITA TAU - Respondent

BEFORE THE HON. JUSTICE CATO

Mr Aho for the Appellant

No appearance of the Respondent

JUDGEMENT

[1] When this matter was called on the 29th June, 2017, the respondent who was a sentenced prisoner at the time appeared before me and requested an adjournment to brief counsel which I granted to today's date. I was informed by Mr Aho who appeared for the appellant that he had been released from custody on a theft charge for which he had received six months imprisonment. That involved bag snatching and arose subsequent to this offending and Mr Aho, also confirmed, whilst he had been on probation for this offending. The respondent did not appear. I decided that since he was well aware of the date of hearing the appeal should proceed today.

[2] The respondent had pleaded guilty to one count of simple housebreaking and simple theft which carry maximum sentences of 3 years imprisonment. The facts reveal that at about 8pm on the 30th March 2016, he broke into a family home and stole

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about \$3400.00 worth of goods, \$1944.00 of which was recovered. He pleaded guilty and before the Magistrate said that he was a changed man and was getting married. Mr Aho informed me that he did not get married, and it seems as I have said committed another offence of dishonesty whilst on probation

[3] The Magistrate had before him a list of his previous convictions. Since 2008, when he would have been about 16, he had committed 6 offences of dishonesty with the last being in 2012. He had received sentences of imprisonment for five of those offences, three of which were housebreakings, one an unlawfully getting on premises, and two of theft for which periods of imprisonment varying between 3 months and a year, with two sentences of imprisonment being suspended.

[4] The Magistrate sentenced him on the 8th September 2016 on both counts to one year probation to be served concurrently. The Magistrate said in his short sentencing judgement;

"As I have seen your record there has been a deterrent sentence given to you also various numbers of imprisonments but still there is no change. As of today, you have stated that you are marrying next week and due to rehabilitation of changing your life."

[5] The appellant, on the 4th October, 2016, filed an appeal on the grounds that the sentence was manifestly inappropriate taking into account the previous history of offending. There seems to have been a delay in transcription of the record in this Court with the file being received here on the 6th October 2016, but not forwarded to me for action until May 2017.

[6] I agree with Mr Aho that the sentence is manifestly inadequate, or inappropriate bearing in mind that the respondent has several previous convictions for housebreaking and theft. The only factor

which mitigates this is that his record reveals he has not offended since 2012. I will take this into account in relation to the sentence I impose today.

[7] I consider that a starting point for simple house breaking which involves a dwelling house and theft of quite a large amount of domestic property, some of this not being recovered, would be about be two years imprisonment. The sentence imposed here of probation might be appropriate for a young, first offender but not for this offending. In not imposing a sentence of imprisonment, the Magistrate completely failed to take into account the importance of deterring housebreaking and indeed the need to protect the public from housebreakers and thieves.

[8] His only reasons given for imposing sentences of probation were that prison had been imposed before with no change occurring and that the respondent was shortly to be married. I do not consider that the fact that prison sentences had been imposed before and had not dissuaded the respondent from offending justifies probationary sentences being imposed. Rather, it would suggest that longer sentences of imprisonment should be imposed for recidivism. Personal circumstances such as intention to marry and domestic commitments do not ordinarily result in significant mitigation, either. In this case, taking into account the guilty pleas, I consider a sentence of 15 months imprisonment would have been appropriate to reflect the seriousness of the offending which was significant, and the respondent's circumstances. After reflection since the hearing this morning, I take into account also that this is a Crown appeal where a lower sentence is usually appropriate to reflect the element of double jeopardy, that there has been, in my view, an inordinate delay in processing of the appeal in this Court (delay in the transcription of a brief record), and the fact his last conviction was about five years ago. These factors mean that I should reduce the sentence

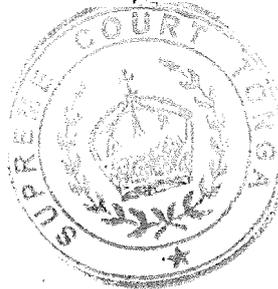
to one of 9 months imprisonment, slightly shorter than the 12 months I had mooted with Mr Aho.

[9] Although there has been a gap in offending, the nature of his present offending which is serious does not inspire me with any confidence that the respondent is a good candidate for rehabilitation. I note also the advice given to me by Mr Aho that, since the sentences of probation were imposed, he has committed another offence involving theft of a handbag for which he was sentenced to 6 months imprisonment.

[10] Accordingly, the appeal is allowed and the sentence varied on the housebreaking and the theft to 9 months imprisonment on each to be served concurrently. These sentences are to be backdated to take into account any remand in custody that has been served in relation to this offending.

[11] I issue a warrant of arrest so that he is brought before this Court to commence his period of imprisonment, as soon as possible.

DATED: 27 JULY 2017



A handwritten signature in black ink, appearing to read "C. B. Cato".

C. B. Cato
JUDGE