

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

Solicitor General
Sean Ah + Upward
CR 100 of 2017
19/12/17

BETWEEN: **R E X** **- Prosecution**

AND: PETELO CHRISTOPHER SAIA TAPUELUELU

- Defendant

BEFORE THE HON. JUSTICE CATO

SENTENCE

1. The defendant , Petelo Tapueluelu, pleaded guilty to one count of manslaughter contrary to sections 86(1)(a) and 92 of the Criminal Offences Act, particulars of which were that, on or about the 30 December 2016 at Neiafu, he did cause the death of Kelekolio Fahiua when he unlawfully punched him causing serious injuries to his spine which cause his death.
2. The summary of facts agreed upon evidence that the deceased was aged 18 and resided in Vava'u. The accused was aged 28 and was a serving member of His Majesty's Armed Forces. I was informed by his counsel, Mr Tu'utafaiva, that he is currently still serving in the Armed Forces. On the 30th December, 2016 at about 8pm, the deceased and a friend left a dance at a High School and commenced drinking a bottle of liquor. Later that evening, the victim left to meet a girlfriend and much later at 3am he met up with his friend at a restaurant for something to eat. They heard a commotion and went out to investigate. The accused, who had been drinking that night; also heard the fight

and went to break it up. He was chasing a large number of youths away when the deceased and his friend walked towards him. The deceased asked who he was and commenced to swear at him. The prisoner walked towards him and punched him twice. The amended summary of facts records that he punched him towards the head area but the deceased blocked those punches with his hands. The deceased turned around and walked about five metres before collapsing to the ground chin first on the pavement. The defendant ran to his aid and with friends took him to hospital. He died on arrival. According to the post mortem, the deceased suffered a cervical spinal injury at the most serious level of cervical spinal injuries. The injury resulted in his being unable to breathe leading to his death. The defendant co-operated with police and admitted the offending and has no previous convictions.

3. In the probation report, the defendant said that he had punched the deceased twice on the chest and had told him to go home. I was concerned about the issue of causation because there seemed to have been a period of time when the victim was able to walk before falling down. This was not a typical case of a person receiving a blow to the head and falling immediately to the ground sustaining a fatal contracoup injury often referred to as a "one punch" death. I asked Mr Tu'utafaiva and Mr Aho about this issue. Mr Tu'utafaiva candidly said that he had advised his client not to plead guilty but he had insisted on doing so. Mr Aho confirmed that the Crown was not able to say there had been any contact with the deceased's head. The important issue for me, on this sentence, is that the evidence does not reveal that the deceased was punched in the head but I accept by his plea given with the assistance of a very experienced counsel that the defendant accepted that his assault was causative of the deceased falling to the ground and sustaining the serious injury that led to his death. I sentence him on this basis. I also note

that the issue of causation is rather unclear and that there is no evidence of the force of the punches, either.

4. The defendant has served in the Armed Forces for eight years and has attained the rank of a Corporal. He has served in Afghanistan, where he received HMAF General Service Medal, British Operational Service medal, and an International Security Assistance Force medal. He completed a dog handler course in India. Commander Tuita who provided a reference describes him as always maintaining a high standard in his performance and said that he had proved himself a diligent and outstanding officer. He described him also as a highly dedicated Non – commissioned officer and well respected by his peers and commanders. His conduct record and performance record was good. He is currently engaged in training as an instructor. Other references were provided which indicate that he is of good character. He is married with three children and his wife looks after the children, He and his family provided the deceased's family in the Tongan way with a substantial sum of money and a feast, and assisted with the funeral. I am informed by Mr Aho that the family have accepted the apology. I am told they do not bear any ill feelings towards the defendant.
5. The case is tragic. The case involves a death of a young man. The defendant had also been drinking (the probation report indicates wine) and it was early in the morning when he should have been, in my view, at home with his family. The defendant had broken up a fight and should have had the sense as a trained professional soldier to resist any provocation such as swearing. In retaliating, by punching the deceased he reacted in a way that he obviously regrets and has assumed responsibility for the death. No doubt his judgement was impaired by the alcohol he had consumed but that is no excuse.

6. It is always difficult to fix a starting point for manslaughter, because the circumstances vary so greatly. Here, I fix a starting point on the basis that the defendant has accepted that his actions materially contributed to the deceased's later falling to the ground with tragic consequences. Because violence was involved but there was no evidence of connection with the head, I consider that this case falls in the lower range. The starting point I fix is three years and six months imprisonment. Had I been satisfied that the defendant punched the deceased in the head and as a consequence he had almost immediately fallen to the ground the starting point would have been higher.
7. By way of mitigation, I acknowledge the special importance of the guilty plea in this case for reasons I have given, and I am prepared to allow the defendant 12 months for this. I also grant him a further 9 months discount for his record of service, his apology and contribution to the funeral, and his good character overall. The sentence I impose upon him for manslaughter is one year and nine months imprisonment.
8. The defendant is plainly entitled to some suspension of his sentence and in this case, considering all the circumstances of the offending as well as his character, contrition, his co-operation and guilty plea and also because I think it very unlikely that he will reoffend, I consider it appropriate to fully suspend his sentence. I am, however, concerned that he was on the night affected by alcohol and that the offending took place in the early morning when he has a young family and should have been home and that this probably impaired his judgement and contributed to his loss of restraint. This concern will be reflected in the conditions of his suspension. Also, I will require him to perform 80 hours community work as a punitive condition.
9. His sentence is fully suspended on the following conditions;

- a. He is not to commit any offences punishable by imprisonment for the period of his suspension;
- b. He is placed on probation;
- c. He is not to drink alcohol during his period of suspension;
- d. He is to undergo a course with the Salvation Army on alcohol abuse under the direction of probation;
- e. He is to undergo 80 hours community work under the direction of Probation. My recommendation, is that he perform this service at Viola Hospital otherwise as Probation directs.

DATED: 7 DECEMBER 2017



A handwritten signature in black ink, appearing to read "C. B. Cato", is written over the right side of the seal.

**C. B. Cato
JUDGE**