

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

Solicitor General
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CR 104 of 2017.

19/12/17

BETWEEN: R E X - Prosecution

AND: MUMUHU POU'UHILA - Defendant

BEFORE THE HON. JUSTICE CATO

SENTENCE

1. The prisoner, Mumuhu Pou'uhila, aged about 17 at the time of this incident pleaded guilty to one count of causing grievous bodily harm contrary to sections 106(1) and (2)(b) of the Criminal Offences Act. It was alleged that on or about the 1st April, 2017 at Longoteme, together with others he did willfully and without legal justification cause grievous bodily harm to Nelesoni Tu'itavake when he threw a brick that hit his face causing the destruction of his eyeball.
2. The agreed facts establish that the victim was drinking with friends when it was noticed that his brother had disappeared. The victim and friends located him with a number of young men and he appeared to skirmish with one of them. The Victim held back his brother and they left. Later, they made their way to a deserted house where they ate food. Shortly after they heard a number of young men challenging them to a fight. They were told no one is to back down.

3. The victim went to see what the commotion was about with his friends, and saw a number of young men running towards them. The prisoner threw a brick at the face of the victim causing him to fall to the ground and black out momentarily. The victim was further assaulted by others of the group. The accused played no further part in the fight other than throwing the brick.
4. The victim was taken to hospital. A preliminary medical report of the 19th April 2017 noted that the victim had multiple broken facial bones around the right orbit of his face. At that time, there was a poor prognosis for the right eye. Further information given to me by Mr Aho indicates that his sight is lost in that eye and he is blind.
5. The prisoner co-operated with the police and has no previous convictions. The prisoner, now aged 18, is said to be a child who did not give them any problems. He is said to have apologized to his parents who are a strong Catholic family and has never again left the house at night. He holds no formal qualifications and dropped out of school in Form 5, the year before this incident. The family attempted to apologise to the victim's family but the probation report indicates that was not accepted. The prisoner is said to deeply regret what he has done.
6. What he did, however, was extremely serious. Teenage fighting amongst youth in Tonga is not uncommon and often stones are used as weapons. In this case, the assault blinded a young man which is a very serious consequence. Plainly the brick or part thereof was thrown at the victim with considerable force. I consider that the starting point for an assault of this kind which has resulted in serious permanent injury should be five years. The sentence must reflect the seriousness of the offending, and deter the prisoner and others from acting in this way.

7. I consider that the prisoner is entitled to one year mitigation for his early guilty plea (he is the only one of several charged to have entered a plea of guilty), and I further mitigate the starting point by an additional 6 months to reflect his age, and the fact he has no previous convictions. He has offered an apology and is remorseful. The sentence I impose on his for grievous bodily harm is three and half years imprisonment backdated to the time he was remanded in custody for this offending.

8. I suspend the final 18 months of his sentence 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 for the term of his suspension to live where directed by his probation officer;

 - c. He is not to consume alcohol during the period of his suspension;

 - d. He is to attend a course on life skills and violence under the direction of his probation officer.

9. He is warned that failure to abide the conditions of suspension may result in his being returned to Prison to serve the balance of his sentence of imprisonment.



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

C. B. Cato

JUDGE

DATED: 14 DECEMBER 2017