

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

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17/12/18

CR 73 of 2018

**BETWEEN:** REX

- Prosecution

**AND:** SIONE TAULUA

- Offender

**BEFORE LORD CHIEF JUSTICE PAULSEN**

**Counsel:** ✓ Crown Law for the prosecution  
The offender in person

**Date of Hearing:** 14 December 2018

**Date of Ruling:** 14 December 2018

**SENTENCING REMARKS**

- [1] Mr Taulua pleaded guilty on indictment to the following offences:
- a. Possession of 1,150.34 grams of cannabis (which is a Class B drug), contrary to section 4(a) and (b)(ii) of the Illicit Drugs Control Act; and
  - b. Cultivation of 1,150.34 grams of cannabis (which is a Class B drug), contrary to section 4(a) and (b)(ii) of the Illicit Drugs Control Act.
- [2] The maximum penalty for both of these offences is, under section 4(a) and (b) (ii) of the Illicit Drugs Control Act, a fine not exceeding \$50,000 or imprisonment for a term not exceeding 7 years or both.
- [3] Mr. Taulua is self-represented. He was formerly represented by Mr Tu'utafaiva and entered not guilty pleas to the charges. At a pre-trial conference Mr. Tu'utafaiva

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was granted leave to withdraw, which Mr. Taulua did not oppose. He was given an adjournment to instruct other Counsel but did not do so. At a hearing on 1 November 2018 he advised the Court that he did not have a lawyer but wanted to change his pleas to guilty. I did not take his pleas at that time but adjourned the case again until 6 November 2018 (which was initially set as the trial date) so he could reconsider and get a lawyer if he wanted to. On 6 November 2018 he again advised me that he did not have a lawyer and wished to plead guilty. He was re-arraigned and pleaded guilty to both charges. He appears today for sentencing.

#### **The summary of facts**

- [4] Mr. Taulua is a 29 year old male, agricultural farmer of Malapo, Tongatapu. On or about 30 October 2017 Police executed a search warrant at the tax allotment at Malapo where Mr Taulua resides. He cooperated with the Police and admitted that he had cannabis which he had just beaten to be dried and which was located under a Tavahi tree on the side of the house. The Police undertook a search of the property and found cannabis plants including some under cultivation. In total the plants weighed 1,150.34 grams.

#### **The material before me**

- [5] In addition to the summary of facts I have been provided with written submissions for the Prosecution and a pre-sentence report. I have also heard from Mr. Taulua.
- [6] The pre-sentence report advises that Mr. Taulua is the second eldest of eight children in his family. He finished his education in Form 3 at Liahona. His family belongs to the Mormon Church. They are very active in the Church; Mr. Taulua less so. His family migrated to New Zealand in 2006 when he was 18 years old but this did not work out well for him. He is said to have made bad associations and as a result of offending was deported from New Zealand in 2010. He admits to having used drugs in New Zealand. He married in 2013 and he has two sons aged 4 and 2 years. Since returning to Tonga Mr. Taulua has had some temporary construction and agricultural work. He says that he does not now use drugs but began growing cannabis in 2017 so that he could sell it and earn an income to support his family. It is said that in recent times he has used his time to cultivate crops and vegetables and he is striving to change for the better.

- [7] I was provided with details of Mr. Taulua's convictions in New Zealand. They were in the main dishonesty and driving offences which I do not consider particularly relevant to this matter. They did not include drug offences. Since returning to Tonga he has been convicted in the Supreme Court for causing grievous bodily harm in 2012, in respect of which he failed to complete community work, and in the Magistrate's Court for possession of cannabis in 2013, for which he was sentenced to a short period of imprisonment.
- [8] The writer of the pre-sentence report advises that Mr. Taulua is remorseful and regrets what he did and now understands the effects that his offending will have on his family. It is said that there has been a change in him in recent times for the better now that he has found alternative ways to earn income to support his family. There is no specific sentencing recommendation.
- [9] Mr. Aho' accepts that the Prosecution's written submissions on sentencing, proposing a starting point for sentencing purposes of 6-7 years imprisonment with no consideration of suspension, is unrealistic and I agree. I accept however that there are aggravating features of this offending namely:
- (a) Mr. Taulua's previous convictions;
  - (b) The offences were premeditated and for personal financial gain;
  - (c) The significant quantity of cannabis involved; and
  - (d) Mr. Taulua did not plead guilty at the first opportunity.

### **Discussion**

- [10] In arriving at an appropriate starting point for sentencing purpose I have had regard to a number of previous decisions. In *Tuita v R* [1999] Tonga LR 152 the Court of Appeal said:

In our view, a conviction for growing any significant amount of marijuana should carry a sentence within the range of three to five years imprisonment. That sentence would not normally be suspended in whole or in part unless there are good reasons relating to rehabilitation, along the lines of the judgment of this Court in *R v Misinale* (CA 13/99, 23 July 1999). Further, we consider that similar sentences should be imposed on persons convicted of possession

for supply of amounts of marijuana that indicate a commercial scale operation...

[11] In *Veaa v R* [2004] TOCA 7 the Court of Appeal also said:

[15] The Court in *Terewi* identified three categories of offending. The first related to the growing of marijuana or as it is called here Indian hemp in small quantities for personal use. The Court said that in such cases a non-custodial sentence was generally appropriate. A similar approach is taken in relation to charges of possession for personal use. In a case of growing for small scale commercial purposes, the Court has said that a starting point of between two and four years may be appropriate and for large scale growing for commercial purposes, a sentence in excess of four years is appropriate. A similar scale of sentencing applies to possession of cannabis. The New Zealand Court of Appeal has also made it clear on numerous occasions that personal circumstances are generally irrelevant when sentencing for drug offending.

..

[18] We are also aware of the reported sentencing remarks made by Ward CJ in June 2001 with which we agree. The Chief Justice made it clear that possession of any drug including cannabis in a small quantity for personal use will in future result in a sentence of imprisonment although that sentence will be suspended for a first offender. He also said that in every case where there is evidence of supply to others the sentence will inevitably be a longer term of imprisonment and suspension of the sentence in any such case would not be appropriate. He said that anyone who sells drugs can expect to go prison for a very substantial length of time.

[12] Mr. Aho referred me to *R v Niu* (CR 53 of 2016) which was a case broadly similar on the facts to this case (although involving a larger quantity of cannabis) where Cato J imposed a sentence of 2 years and 3 months imprisonment with the final 15 months suspended subject to conditions. In *R v Musika* (CR 137/17) the offender was convicted after trial on one count of possession of cannabis plant (42.91 grams) and one count of possession of cannabis seed (1,221.1 grams). The offender was a mature first time offender and had admitted to being in possession of some of the cannabis materials but not all of it. Justice Cato sentenced him to 18 months

imprisonment on count one and 3 years imprisonment on count two which were to be served concurrently. He suspended the final 9 months of the sentence subject to conditions.

[13] Despite his previous conviction for possession of cannabis Mr. Taulua made a decision to cultivate and sell cannabis for financial gain. The amount of cannabis found was substantial. He must have been aware that should his offending be detected a period of imprisonment was inevitable. Having regard to these matters and the cases to which I have referred the starting point for sentencing purposes is to my mind 3 years and 3 months imprisonment on both counts.

[14] In terms of mitigation, Mr. Taulua cooperated with the Police, for which I discount his sentence by 3 months. As he embarked on a commercial operation of cultivating cannabis knowing the consequences if caught I do not accept his expressions of remorse. However, he did plead guilty before trial and I give him a discount of 9 months from his sentence for this. The end result is that on both counts of the indictment Mr. Taulua is sentenced to 2 years and 3 months imprisonment, which sentences shall be served concurrently.

[15] I must now consider whether to suspend all of some part of these sentences. Based on the principles in *R v Mo'unga* [1998] Tonga LR 154 I have decided that there are grounds to exercise my discretion because there is the potential for Mr. Taulua's rehabilitation. He has a young family. He asked me to take into account that fact that he is a father and his son is starting school next year. I understand that he has in recent times found an alternative means of supporting his family through farming work. I am prepared to give him a final opportunity to rehabilitate himself. I am not however prepared to fully suspend the sentence.

### **Result**

[16] Mr. Taulua is convicted on each of the two counts in the indictment and he is sentenced as follows:

- (a) On count 1 to 2 years and 3 months imprisonment;
- (b) On count 2 to 2 years and 3 months imprisonment;
- (c) All sentences shall be served concurrently;

(d) The last 15 months of the sentences shall be suspended for two years subject to the following conditions:

(i) He is not to commit any offence punishable by imprisonment during the period of suspension;

(ii) He is to be placed on Probation during the period of his suspension;

(iii) He is ordered to undergo an alcohol and drug abuse programme under the direction of Probation and the Salvation Army.

[17] The cannabis plants are to be destroyed.



A handwritten signature in blue ink, appearing to read "O.G. Paulsen".

O.G. Paulsen  
LORD CHIEF JUSTICE

NUKU'ALOFA: 14 December 2018.