

- [3] The wife saw what happened and called for help. Two Tongan boys walking nearby ran after the accused. The chase went around a Church building and disappeared from sight. A policeman who happened to be in the area also joined the chase. They caught the accused some distance from the shop and took him to the police station.
- [4] At first the accused denied having hit the Chinese man or taking any money from him. The Chinese told the police that the accused did it and that the accused had stolen \$8,000 in cash which he had in his trouser pocket.
- [5] Upon further questioning by the police, the accused admitted that he had punched the Chinese man and taken the money and had thrown it in some bush as he ran. The police took him there and the police found the money there. They counted it there and found it to be only \$4,000 all in \$100 notes.
- [6] The money was given back to the Chinese man, who maintained that there was still \$4,000 missing.
- [7] The accused was charged with robbery of \$8,000 and was committed from the Magistrate Court to this Court. The accused pleaded not guilty because he said the money he took was only \$4,000 and not \$8,000.
- [8] When the case came before me, the Crown agreed with the accused to reduce the amount of the charge to \$4,000 and the accused would plead guilty to it.
- [9] Accordingly, the charge was amended to robbery of \$4,000 and the accused pleaded guilty. I then adjourned the matter for a probation report. The accused had and has no counsel.

No previous conviction

- [10] The accused has no previous conviction.

Personal circumstances

- [11] The accused has just turned 16 years old on 16 November 2018. He was born 16 November 2002. He is the second eldest of 5 children of his parents. He is in form 5 in College. He was in primary school from 2008 to 2013, then went to one college where he got to form 3 but was suspended for some misconduct not clarified in the probation report. He then attended this present college where he

has shown a vast improvement. The first college was of his religion but the second college is not. In the mid-year examination this year he is said to be amongst the top 10 in the form 5.

[12] The accused's mother was most shocked with what the accused did especially the drinking of alcohol and doing what he did. She says that ever since this has happened the accused has disassociated himself from the boys he had hung around with and has changed and is now working hard at his school work and staying at home after school and is obedient to them parents.

[13] The accused has also acted responsibly by going to seek the forgiveness of the Chinese man and to make amends but the couple have moved elsewhere and the accused could not find them.

Probation report

[14] The probation officer believes that it is unlikely that the accused will re-offend because his offence had occurred because of the friends he had, and the alcohol he consumed, and he has now broken off from them and alcohol. He believes that a non-custodial sentence be imposed but that he serves community service and be on probation for 2 years on condition he does not re-offend and does not drink alcohol.

Crown submissions

[15] Ms. Fakatou for the Crown submitted that the accused is entitled to be considered for either a full or partial suspension of an imprisonment sentence in accordance with the principles in *Mo'unga v Rex* [1998] Tonga LR 154. I asked her whether discharge without conviction may be appropriate and she stated the Crown's position is that discharge without conviction should only be applied in respect of cases in the jurisdiction of the Magistrates. I do not agree that that was the intention of the Legislature in enacting the section.

Consideration

[16] Having considered all the circumstances of this case, I consider that in view of the young age of the accused and of what may be a promising future for him with his education, and apparent effort and progress made already with his behavior at school, at home and the village, a conviction for such a serious

offence as robbery will be far more detrimental than the injury and theft he committed to the complainant. I consider that this is an appropriate case for discharge without conviction but with a condition that he does not reoffend within the next two years. With such order his record is clean and it leaves him with the goal that he keeps it clean for the rest of his life.

[17] Accordingly, I order that the accused is discharged without conviction under s.204 of the Criminals Offences Act upon condition that he commits no offence within 2 years from the date of this order.



A handwritten signature in black ink, appearing to read "L. M. Nitu", is written over the right side of the seal.

L. M. Nitu

JUDGE

NUKU'ALOFA: 26 November 2018.