

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

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CR 134 of 2018

[Signature]
20/05/19.

BETWEEN: REX
- Prosecutor

AND: SITIVENI LOUPUA MAHE
- Accused

BEFORE HON. JUSTICE NIU

Counsel : Mr. 'I. Finau for prosecution
Mr. V. Mo'ale for accused

Plea & date : Guilty.

Probation Report : Filed on 26 February 2019.

Hearing : Submissions of both counsel heard on 24 April 2019.

Sentence date : 17 May 2019

SENTENCE

[1] You have pleaded guilty to the following offences:

- Count 1 : Carrying arms in a public place contrary to S.44 of the Arms and Ammunition Act.
- Count 2 : Discharging firearm with intent to intimidate contrary to S.109 of the Criminal Offences Act.

Count 3 : Possession of firearm without a licence contrary to S.4(2)(b) of the Arms and Ammunitions Act.

You now appear before me to be sentenced for those offences.

- [2] You committed these offence whilst you were on or beside the road in the village of Popua where you live, outside the hall of the Church of Tonga where some dance practice was held. You did have a licence to possess and use a .22 rifle but not to fire it to intimidate anyone. Yet that was what you did. You took out your rifle from your vehicle and pointed and fired it on the road just behind or beside Litili Televave's feet – twice. The gravel thrown up by the first bullet hit his hands. You then got into your vehicle and drove away to your home. In your vehicle was an air rifle for which you had no licence. The police came to your home and found it in your vehicle, together with the .22 rifle and its magazine.
- [3] When you were questioned by the police you said that you were drunk and you were at the dance practice and you felt happy and you just went outside and fired the shots.
- [4] The probation officer interviewed you and gave his report to me. In that report, he stated that you told him that you and some others had gone and got firewood for food preparation for the Church of Tonga conference and then you had a few beers. You then went to the dance practice and you were happy there and you went outside and got your gun and fired it up in to the sky. You told him that you did that just to show how happy you were.
- [5] But that was not true. You did not fire the two shots into the sky. You fired them, while you were aiming, at the road beside or behind Litili's feet. The gravel thrown by the impact of the first bullet hit his hands. He told the police that because he went and complained to the police and the police came and arrested you. And when the police questioned you, you did not tell them that you had fired the shots into the sky. That is why I believe that what you told the probation officer was not true.
- [6] But as a result of what you told him, the probation officer believed you. He thought that you did not fire the shots to intimidate Litili but only to show your joy at the success of the dance practice. He accordingly recommended to me that

you should be discharged without conviction. Your counsel has also submitted that I should uphold that recommendation because you were firing the shots out of joy and not out of hatred or with the intent to intimidate Litili. Both the officer and your counsel have been misled by your story that you fired the shots into the sky.

- [7] If you in fact fired the shots into the sky then you had not meant to intimidate anyone and the police might not have charged you with that offence. But you did not tell them that you fired the shots into the sky, and furthermore, you have pleaded guilty before me that you fired the shots to intimidate Litili, namely, that you fired the shots at the area near his feet, as is described in the particulars of the charge which were read to you before you pleaded guilty to the charge.
- [8] Such an offence is serious and it can never warrant a discharge without conviction.
- [9] All 3 offences to which you have pleaded guilty carry a maximum of 5 years imprisonment sentence.
- [10] You are 54 years of age, married and you live in your own house on your own town allotment with your wife and 4 children at Popua. You work as supervisor in Palu Aviation and you earn \$300 per fortnight. You are the head or chairman of community police force of Popua and you lead that work quite ably, in patrolling during the night to ensure no offence is committed or that young children venture out at night without a guardian in the village. You are highly respected in your village and the people look to you for guidance and assistance. You had no criminal conviction until now. You even asked to resign from your position as chairman because of what you did in this case but the community still wanted you to be the chairman. You have apologised to the complainant for what you did and he has accepted and forgiven you. In fact he is also one of the village police under your care and who support you in your work as such.
- [11] I accept that what you did in this evening last year was out of character, and the reason for that was because you, being a member of the Church of Jesus Christ of Latter Day Saints, which teaches that you must abstain from alcohol, drank a few beers with the boys which caused you to do what you did. And you have

demonstrated that you have repented that transgression and have quitted to drink alcohol again.

[12] Nevertheless, an offence involving a firearm is serious and in these 3 offences the maximum sentence is 5 years imprisonment. The Courts have stated in other cases that a starting point for consideration of sentence is about 3 years. I do not see any reason to depart from that. But in your case, I see more mitigating than aggravating factors. You cooperated with the police, you apologised to the complainant, you have pleaded guilty, and you have quit the drinking of alcohol. And importantly, in all your 54 years of age, you have had no criminal conviction. I would allow a reduction for those and leave a sentence of one year imprisonment.

[13] Now both counsel submitted, and I agree with them, that your imprisonment sentence be fully suspended. This is because I accept that you have demonstrated that you would truly resume your law abiding character and model citizenship for the community. And you are already carrying out unpaid community service to your community by being one of its village police, let alone chairman thereof. I therefore do not see any reason to require that you serve any compulsory hours of community service by Court order.

[14] As to the air rifle, you had no licence for it and you did not apply for a licence for it. You were possessing it unlawfully. You told me that you need your .22 rifle for the killing of your pigs and cattle which you own. You do not need the air rifle for that. The Crown has asked and has submitted that both firearms be forfeited under S.37 of the Act. That section provides that all arms in respect of which an offence has been committed may be seized and "shall be liable for forfeiture by order of the Court". The forfeiture is not mandatory. I consider that the suspended sentence of 1 year imprisonment is sufficient assurance that you will not misuse your .22 rifle again in future.

[15] The Crown has also asked and submitted that I recommend to the Minister of Police under S.27 that your licence for the .22 rifle be cancelled. No charge was made that you breached the condition of your licence to possess it. It is a matter for the Minister himself to consider, as he alone has the discretion, to cancel or renew a licence he has issued.

[16] Accordingly, I sentence you as follows:

- (1) (a) Count 1 - carrying arms in a public place – 1 year imprisonment.
- (b) Count 2 - discharging firearm to intimidate – 1 year imprisonment.
- (c) Count 3 - possession of firearm without licence – 1 year imprisonment.
- (d) All sentences are to be concurrent, but are to be fully suspended for a period of 2 years from today.

You must be aware that that suspension means that if you do not re-offend within the 2 years, then your 1 year imprisonment is extinguished. But if you commit another offence within the 2 years, of any type but which is punishable by imprisonment, you will be required to serve the 1 year imprisonment as well as the imprisonment for the new offence.

- (2) The air rifle is forthwith forfeited.

NUKU'ALOFA: 17 May 2019.




L. M. Niu
JUDGE