

19/07/19

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

CR 17 of 2019

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BETWEEN:

REX

- Prosecutor

AND:

PETUELI MAFI TUITA

- Accused

BEFORE HON. JUSTICE NIU

Counsel : Mr. F. Samani for the Crown  
Mr. S. Tu'utafaiva, for the accused

Hearing : 10 July 2019

Plea : Guilty

Sentence date : 17 July 2019

SENTENCING

[1] Petueli Tuita, you have pleaded guilty to 2 of the 3 counts of the indictment. The third count has been dismissed upon the Crown offering no evidence on it. You had already pleaded guilty to count 1, that is, to having possession of a firearm without a licence when you were arraigned on 7 March 2019, and then you pleaded guilty to count 3 on 10 July 2019, when the charge was amended to read that you entered the yard adjacent to the dining hall of Tonga College (and

not the dining hall of Tonga College). Your counsel informed me that had that been the wording of the charge when you were arraigned, you would have pleaded guilty to it then as well. I allow you full credit for your guilty pleas.

[2] You now appear before me today to be sentenced for those 2 offences:

- (a) possession of arms without a licence (count 1) and
- (b) trespassing with arms in a yard adjacent to a building (count 3).

Possession of arms without a licence carries a sentence of imprisonment of up to 5 years. The trespassing offence also carries a maximum of 5 years imprisonment. They are both serious because of the risk of injury or death which an arm can cause. It even threatens the safety and security of the people if arms are not properly controlled by licensing them as required by the Arms and Ammunitions Act.

[3] An airgun, such as the one you possessed, is an arm as defined in the Act although its pellets or bullets are not propelled by gun-powder but by air pressure alone, because the pellets can still cause injury. I accept that it is less dangerous than firearms which use gun-powder bullets like rifles and pistols, and that air guns are used more for birds and small animals, but it is nevertheless still an offence to possess it without a licence.

[4] On 18 May 2018, the police came with a search warrant to your house at Matangiake and you showed them where the airgun was in your house and they took it and arrested you for possessing it without a licence. You cooperated with the police and you readily admitted the offence.

[5] The reason the police had come on that day was because you had used that airgun two days earlier, that is, on 16 May 2018, at 'Atele. Your son was driving a truck with workers on the back of it and they were playing loud music from the truck. You were driving another motor vehicle and following closely behind the truck as you both turned off 'Taufa'ahau Road and travelled west along Loto Road to go home to Matangiake.

[6] Some Tonga College students were walking home from school westward along Loto Road and trying to hitch a ride on vehicles travelling westward. May be

they indicated to your son that they wanted a ride but he did not stop and that offended one of them or may be one was offended by the loud music from the truck your son was driving, but the offended one threw an empty beer bottle which bounced off the truck and hit the vehicle you were driving.

- [7] You stopped your vehicle. All the students ran off into the nearby bush beside the road. You then got out of your vehicle with the airgun in your hand and fired 2 shots, with the gun being aimed at the bush where the boys had run into.
- [8] You and your counsel explained to me in Court that you had had no bullet or pellet in the gun at all when you fired those 2 shots or any other shot that day. But that when you pulled the trigger of the gun to fire a shot, the gun made a loud sound like a shot which was caused by the escaping air that would have propelled a pellet. You said the shots were harmless because there were no pellets but you fired them to scare the students and to make them come back but they did not come back. So you turned your vehicle and drove up to the school, Tonga College, where you went to the yard by the dining hall and questioned students there as to where the offending boys were, whilst still holding the airgun in your hand.
- [9] It is clear that you did not tell anyone of those students at the roadside or at the hall or any person at the school, that the gun was harmless because it had no pellet or bullet in it. You wanted them all to think that the gun was loaded and lethal so that they would tell you what you wanted to know. You must now appreciate how frightening you must have been to the boys by the road and to the boys by the dining hall. They would have been trembling with fear for their life.
- [10] If you had had a lawful purpose to enter the school ground, namely to make inquiry as to the identity of the student who had thrown the empty beer bottle at the vehicles, you certainly destroyed the validity of that lawful purpose when you had with you in your hand a gun which you clearly indicated you would use if your questions were not answered to your satisfaction. You thereby became a trespasser and you had no lawful excuse to be there, which is why you have pleaded guilty to that charge as well.

- [11] I do accept however that you were provoked by the unlawful throwing of the bottle at your vehicles but it was not an excuse for you to break the law. Your action caused great consternation at the roadside and at the school that it was reported to the police and with a search warrant issued by the Court, they came and arrested you with the gun on 18 May 2018. The provocation however does mitigate the severity of the punishment that would otherwise be applicable to your action. The mere fact of throwing an empty beer bottle at a moving vehicle is itself a dangerous act because it could have caused injury to the driver or to a passenger thereon. I fully understand why you reacted as you did and did what you did. Your counsel and the Crown Counsel both agree that a fine, rather than imprisonment would be befitting the circumstances of your offences. I agree with them.
- [12] In the case of *Lion -v- R* [2010] Tonga LR 181, the accused, who was 60 years of age, was in possession of a semi-automatic 9mm pistol and 60 bullets for it. He said that he had held it a security for a loan which was never repaid. He kept the gun and bullets under a table in his office. He pleaded guilty to possession of the gun and to possession of the bullets. On the possession of the gun, he was sentenced to 1 year imprisonment but fully suspended for 2 years, and in respect of the bullets, he was fined \$3,000 to be paid in 1 month in default of which he would serve 1 year.
- [13] In *R v Tu'ilakepa* (CR172/2014), the accused was in possession of 4 guns and ammunition for them. He was fined \$2,000 in respect of each gun and \$2,000 in respect of the ammunition, making a total fine of \$10,000.
- [14] In *R v Tu'iba'ateiho* [2015] Tonga LR 44, the accused was in possession of a semi-automatic pistol. He was fined \$2,500 to be paid within 2 months in default of which he would serve 3 months.
- [15] All three of those cases concerned firearms, that is guns with gun-powder firing bullets. They were weapons. They were lethal. The heavy fines reflected that. An airgun is not such a weapon. It is a less dangerous weapon and a lesser fine in respect of it should reflect that.

- [16] In the case of *R -v- Sitiveni Mahe* (CR134/2018), the accused was in possession of a loaded firearm (.22 rifle) in a public place which he fired at the road in the immediate vicinity of the complainant's feet. He had a licence for the .22 rifle but he did not have a licence for an air rifle which he had in his vehicle at the same time. He pleaded guilty to carrying a loaded arm in a public place, to discharging firearm with intent to intimidate and to possessing the air rifle without a licence. In the circumstances of that case and on a totality of all 3 offences, I sentenced him to 1 year imprisonment on each count, all to be concurrent, and fully suspended all 3 sentences for 2 years. I ordered the forfeiture of the air rifle as well.
- [17] In that case of Sitiveni Mahe, he did not use and was not charged with the use of the air rifle. Now, in your case, you used the air gun. You had it in your hand while you were in the yard by the dining hall, and, as I have stated, questioning and demanding that the boys there tell you who or where the boy or boys who had thrown the beer bottle at your vehicles was and where.
- [18] Having considered the circumstances of these 2 offences, your guilty pleas, your previous good record, the provocation caused by the school children, and the less dangerous aspect of air guns compared to ordinary firearms, I consider that a fine of \$500 in respect of each offence is warranted.
- [19] Accordingly, I sentence you to –
- (a) a fine of \$500 in count 1,
  - (b) a fine of \$500 in count 3,
  - (c) both fines to be paid within 1 month from today, in default of which you will serve 3 months imprisonment.
- [20] I also order that the air gun be forfeited forthwith.

NUKU'ALOFA: 17 July 2019.



  
L. M. Niu  
JUDGE