

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

CR 15 of 2020

REX

-V-

VILIAMI LEKA

BEFORE HON. JUSTICE NIU

**Counsel : Mrs. 'A. 'Aholelei for the Crown
Mr. S. Tu'utafaiva, for the accused**

Hearing : On Mitigation on 20 April 2020

Sentencing : 27 April 2020

SENTENCING

- [1] Viliami Leka, you have pleaded guilty to possession of 0.61 gram of methamphetamine, an illicit drug, which is an offence under the Illicit Drugs Control Act.
- [2] Your counsel told me and I accept that you are 32 years of age and still single but that you have a 13 year old daughter whom you have maintained up to now from your occupation as a fisherman. He said that you had taken meth before but that you did not become an user, but that on this day you had won a lottery of some \$900 or so and that you and three male friends went out for drinks to celebrate and with the liquor in you and money in your pocket you decided to take some meth again. But fortunately for you, the police became aware of the purchase of the meth you made and stopped and searched you and your vehicle and your

friends and found the meth and smoking pipe in a little bag in your possession.

- [3] I say it was fortunate because you were caught before you had smoked the meth you had purchased. You might have become addicted if you did and that would be the end for you because you would no longer want to do without it and you would not earn enough to buy it any more. That is because you would be under the influence so much that you would no longer be able to fish and earn your livelihood for yourself and your daughter. It is also fortunate that your 3 friends who were there with you did not get to smoke the meth because they might similarly be also addicted and thereby bring misery to their own families themselves.
- [4] That is why the King and the Legislative Assembly of the Kingdom have enacted that the penalty for possession of illicit drugs such as meth be punishable by fine of up to \$1,000,000 or by imprisonment of up to 30 years. It is the most severe penalty ever enacted for a criminal offence other than for murder and treason, for which the penalty is capital punishment or life imprisonment.
- [5] The illicit drugs are such that they make the user want to use it all the time and which leave them useless to do any work. Because they do no work, they earn nothing so they steal to get money to buy more drugs. They might as well be put in prison because they are useless to themselves and to their families and especially to society. At least in prison, there is the opportunity to "dry" them up so that they are no longer dependent on the drugs and hopefully may come back into society as useful persons instead.
- [6] However, the Courts have been mindful that persons such as yourself may be able to do the right thing and to refrain, in accordance with your conscience, from taking the drugs again, and thereby continue to be useful members of society, especially when other persons, innocent persons like your daughter, need your continued earning from your occupation. The Courts have

accordingly sentenced such occasional users, such as yourself, to prison sentences but with such sentences being suspended.

- [7] That means you are sentenced to serve a prison sentence for the offence but it is suspended for a certain period during which you are not to commit any offence which is punishable by imprisonment. If you do, you are then ordered to serve the suspended imprisonment sentence as well as the sentence for the subsequent offence. If you do not re-offend, your sentence is cancelled at the end of the period of suspension.
- [8] So that it depends only on you. If you behave and do not commit any offence during the period of suspension, your imprisonment sentence is cancelled. But if you yourself decide to commit another offence (which is punishable by imprisonment) you then serve out the suspended sentence.
- [9] The Courts also consider that in addition to the suspended sentence you are to serve a community service of so many hours which you are only required to be carried out on Saturdays, thereby leaving you free in the rest of the week to carry out your occupation for the livelihood of yourself and of your family.
- [10] You may also be ordered to attend courses wherein you would learn to control your urge to want to drink liquor or consume drugs, which should also assist you to overcome any problem you may have with them.
- [11] Counsel for the Crown, Mrs. 'Aholelei, has usefully referred me to drug cases and the sentences imposed by this Court, in particular cases similar to yours:
- (a) *R v Maile* [2019] TOCA (AC23 of 2018) where that accused had possession of 0.52 gram of meth. He was sentenced to 9 months imprisonment but suspended on conditions that he shall

- (i) not commit any offence punishable by imprisonment during the period of suspension;
 - (ii) not consume alcohol or drug;
 - (iii) be placed on probation;
 - (iv) serve 50 hours of community service;
 - (v) attend an alcohol and drug awareness course.
- (b) *R v Haghi* (CR 26/2019) where that accused had 0.86 gram of meth. He was sentenced to 9 months imprisonment but suspended on the same conditions as in Maile Case.
- (c) *R v Katoa* (CR 91/2018) where that accused had 0.76 gram of meth. He was also sentenced to 9 months imprisonment but similarly suspended as the other two cases.

[12] Based on those cases, Mrs. 'Aholelei submitted that you are to be sentenced to 9 months imprisonment but suspended on the same conditions as in the Maile Case, and that the period of suspension be 4 months. However, I consider that a suspension period should be much longer because the longer it is, the longer it is that the person is required to keep an offence free life, and by being offence free for such long period, there is then assurance to some extent that he would not revert to his former "offence-ful" life. The purpose of the suspension of the sentence is thereby achieved.

[13] Your counsel, Mr. Tu'utafaiva agreed with Mrs. 'Aholelei and urged me to accept it because you told him that this is the last time you would show up in Court again.

[14] Having considered your case and in particular your acceptance that you have done wrong and that you have shown that by pleading guilty to the charge, I agree except as to the period of suspension, and I make the following orders:

- (a) You are sentenced to 9 months imprisonment but fully suspended for 2 years from today on condition that

- (i) you serve 50 hours of community service as directed by the Probation Service;
 - (ii) you are not to commit any offence punishable by imprisonment during the period of suspension;
 - (iii) you are placed on probation during the period of suspension;
 - (iv) you are to attend an alcohol and drug awareness course under the direction of the Probation Service.
- (b) The police are to destroy the drugs in respect of which this charge has been brought forthwith.



A handwritten signature in blue ink, appearing to read "Niu J", is written over the seal.

Niu J
J U D G E

NUKU'ALOFA: 27 April 2020.