

IN THE SUPREME COURT OF TONGA

CRIMINAL JURISDICTION

NUKU'ALOFA REGISTRY

CR 38 of 2020

REX

-v-

SIONE MAFI LOLOHEA

BEFORE HON. JUSTICE NIU

Counsel : Mr Joe Fifita for the Crown
Mr Sione Mafi Lolohea for himself, accused

Probation Report : by Henele Telefoni, Probation Officer on 18 May 2020

Submissions : by Joe Fifita on 21 May 2020

Hearing : on sentence on 29 May 2020

Sentencing : 19 June 2020

SENTENCING

Guilty plea

[1] Sione Mafi Lolohea, you have pleaded guilty on 20 April 2020 before me to two charges, namely:

(a) serious housebreaking contrary to S.173(1) and (5) of the Criminal Offences Act, in that you entered Pesalili and 'Ilaisaane Kailahi's house at Ha'ateiho as trespasser and committed a crime there in the month of May 2019.

(b) theft contrary to S.143(a) and S.145(b) of the Criminal Offences Act, in that you stole 11 fuatanga toka 10 worth \$5,500, 2 lokeha worth \$1,600, 39 Kie Tonga worth \$7,800, 2 ta'ovala worth \$1,800, 2 fala fihu worth \$2,000 and 1 falavala worth

\$700, altogether worth \$19,400 which were the properties of 'Ilaisaane Kailahi at Ha'ateiho in the month of May 2019.

Serious housebreaking

- [2] S.173(5) provides that the offence of serious housebreaking is punishable by imprisonment for any period not exceeding 10 years.

Theft

- [3] S.145(b) provides that if the value of the thing stolen exceeds \$10,000, the offender is liable to imprisonment not exceeding 7 years.

Summary of facts

- [4] The Crown prepared a summary of facts which was copied to the accused and it stated as follows:

- "(1) The Complainant is 'Ilaisaane Kailahi, from Ha'ateiho, Tongatapu.
- (2) The Accused is Sione Mafi Lolohea ('Sione'), a 34 year old male from Popua, Tongatapu.
- (3) (inapplicable and is omitted).
- (4) On or about the month of May 2019, the Complainant returned to Tonga to visit her husband, Pesalili Kailahi. During her visit to Tonga, the Complainant and Pesalili found that their house at Ha'ateiho had been burgled.
- (5) The Complainant confirms that the following Tongan artifacts were taken from their house:

Quantity	Description of Good	Value
11	Fuatanga toka 10	\$5,500
02	Lokeha	\$1,600
39	Kie Tonga	\$7,800
02	Ta'ovala	\$1,800
02	Fala Fihu	\$2,000
01	Falavala	\$700
TOTAL		\$19,400

- (6) On or about the month of May 2019, the Police executed a search warrant at X's residence at Matangiake. The search was in relation to stolen Tongan kava.

- (7) When the Police arrived at X's residence, the accused and two others were present so they informed them of the purpose of the search then began searching the residence.
- (8) After the search, the Police found the stolen Tongan kava and several Tongan artifacts (3 Kie Tonga and 1 ta'ovala putu). The accused was then arrested and taken into custody at the Mu'a Police Station.
- (9) On or about the month of June 2019, the Police contacted Pesalili to come to the Mu'a Police Station. The Police showed Pesalili the Tongan artifacts found at X's residence.
- (10) The accused was present when the Police showed Pesalili the Tongan artifacts, so he asked the accused why was he at Ha'ateiho.
- (11) The accused told Pesalili that he went to one Tonga Hai's residence at Ha'ateiho and he noticed the lights at Pesalili's house were off so he went and broke into his house.
- (12) The accused admitted to Pesalili that he came in a rental car and burgled his house. He then apologized to Pesalili for burgling his house.
- (13) On or about 23 June 2019, the Police received a formal complaint from the Complainant.
- (14) (inapplicable and is omitted).
- (15) The accused was later interviewed by the Police and he chose to remain silent.
- (16) The Accused has previous convictions for theft and housebreaking."

No property recovered

- [5] Most of the properties you stole have not been recovered and no compensation has made or paid by you for any of the properties of the complainant you stole.

Probation report

- [6] Mr Telefoni, the probation officer, has submitted a report which he has prepared after interviewing you in prison on 2 May 2020. He says that you told him that you had begun offending and being sentenced to prison since the year 2000 when you were only 14 years old, and that you have re-offended repeatedly over the years, mostly housebreaking and theft, up to now. He says that you have been sentenced to prison some 10 times.
- [7] He says that your older brothers were no strangers to the Courts because of their repeated housebreaking and theft offences, and that you had no chance to grow up differently. You were led by them and you began housebreaking and theft and you have not stopped up to now. He says that you told him that you were never given any opportunity to be taught the life skills course and rehabilitation courses conducted by the Salvation Army, and he says that if given the opportunity you would make use of it and learn to make something with your life, late as it may seem, at your present age of 34 years.
- [8] Mr Telefoni accordingly recommends that, if acceptable to the Court, you be given a suspended sentence for these two present offences, to commence after your present imprisonment sentences which would finish by end of this year, during which you would be under Probation of good behavior and to live and work where directed by the probation officer and to carry out 120 hours of community work as directed by the probation officer, and most importantly, that you undertake and complete satisfactorily the rehabilitation program at the Salvation Army, focusing on life skills, offending behavioral addiction, Alcohol and Drug awareness programs and such other program as the Salvation Army Officer shall deem necessary.

Previous convictions

- [9] In view of your long history of offending as conveyed by the probation officer, I directed Crown counsel to try and provide to me all your criminal convictions and sentences from the beginning up to now. He has done that and I set them out as follows, as best as the record does show:

No.	Case no.	Date of Sentencing	Offences	Sentence	Court
1	703/97	2/12/97	Theft	1 year probation	Mag.
2	157/98	31/3/98	Theft	10 strokes (whipping)	Mag.
3	17/00	13/6/00	Housebreaking & theft (Matoto house)		
4	62/00	13/6/00	Housebreaking & theft (Vea house)		
5		13/6/00	Housebreaking & theft (Office Equipment)		

6		13/6/00	Housebreaking & theft (Game Parlour)	3 years imprisonment with last 2 ½ years suspended for 2 years, and to reside with Capt. Vasu of the Salvation Army at Vaini.	Sup.	
7		13/6/00	Housebreaking & theft (Friendly Island Bookshop)			
8		13/6/00	Housebreaking & theft (TEPB)			
9		13/6/00	Housebreaking & theft (TEPB)			
10	94/00	13/6/00	Damage to Game Parlour			
11		13/6/00	Damage to TEPB			
12	100/00	13/6/00	Housebreaking (Central Police Station)			
13	161/00	13/6/00	Theft (cannabis plant) (Central Police Station)			
14	78/03	2/11/03	Housebreaking & theft			Mag.
15			Housebreaking & theft			6 months imprisonment
16	140/04		Housebreaking & theft			
17	142/04		Housebreaking & theft			
18	46/05	26/2/05	Robbery & bodily harm	6 years imprisonment	Sup.	
19	38/04	23/11/05	Bodily harm	2 years imprisonment. Attend Salvation Army course on Anger management, alternatives to violence, Drugs & Alcohol awareness	Sup.	
20	18/05	19/12/05	Drunkenness	\$100 or 2 months	Mag.	
21	574-575/09	12/1/10	Housebreaking & theft	2 years imprisonment	Mag.	
22	578/09	12/1/10	Housebreaking & theft	2 years imprisonment	Mag.	
23	579/09	12/1/10	Housebreaking & theft	2 years imprisonment	Mag.	
24	111/12	27/8/12	Housebreaking & theft	4 years imprisonment	Sup.	
25	303/12	5/10/12	Housebreaking	4 years imprisonment	Mag.	
	182/12	5/10/12	Theft	2 years imprisonment	Mag.	
26	115/13	6/7/13	Theft	1 year imprisonment	Mag.	
	116/13		Conspiracy	1 year imprisonment (but 6 months suspended)	Mag.	
27	68 & 71/16	3/6/16	Housebreaking & theft	2 years imprisonment with the last 6 months suspended for 1 year	Mag.	
28	38-39/17	2/2/17	Assault & damage	Comp. \$100 & replace louvers by 2/2/17	Mag.	
29	94-95/18	18/8/18	Escaping (twice)	6 months imprisonment	Mag.	
30	187-188/18	-	Entry by night	6 months imprisonment	Mag.	
31	3-4/19	-	Housebreaking & theft	6 months imprisonment	Mag.	
32	21-22/19	-	Housebreaking & theft	6 months imprisonment	Mag.	
33	316-318/19	-	Housebreaking & damage	4 months imprisonment	Mag.	
34	403/19	-	Escaping	1 month imprisonment	Mag.	
35	89/20	-	Possession of illicit drugs	4 months imprisonment	Mag.	
36	101-102/20	-	Housebreaking & theft	2 months imprisonment	Mag.	
37	-	13/3/20	Illicit drugs & theft	15 months imprisonment	Sup.	

Pending cases

- [10] Mr Fifita says that on 14 May 2020 you pleaded guilty in the Supreme Court before Cato J to offences of robbery and unlawful imprisonment and that you are to appear for sentence for those offences on 26 June 2020. He also says that you have a theft case before the Magistrate's Court which is in the process of committal to the Supreme Court.

Current prison sentences

- [11] Going only by your record as stated above, you were sentenced on 13 March 2020 for your offence no.37 for illicit drug and theft for 15 months imprisonment. If you earn the total remissions for that sentence, you will only serve 11 months 7 days of that sentence, and counting from 13 March 2020 you would finish serving that on 20 February 2021. You would then serve whatever sentence I would impose on you for this housebreaking and theft offence. When that is finished, you will then serve the prison sentence which you will receive for the robbery and unlawful imprisonment offences which will be imposed by Cato J upon you on 26 June 2020. Then there is the theft case that is yet to be committed from the Magistrate's Court.

Crown submissions

- [12] Mr Fifita properly referred to other serious housebreaking and theft cases similar to yours, namely, *Malafu* (CR 133/2016), *Fifita* (CR 74/2018), *'Ealelei* (CR 162/2018), *Maile* (CR 133/2019) and *Liku* (CR 47/2019), but he properly distinguishes them from your case because of your past and long history of housebreaking and theft. He points out that in 2019 alone you had 6 convictions mainly involving housebreaking and theft, and that you have not made any effort to rehabilitate your way of life. You have made your life a life of crime and that the safest place for you for the sake of the community is in prison, because you just continue to commit an offence as soon as you are released back into community.
- [13] He submits that a proper starting point for your sentence is 5 years imprisonment, and that the only mitigating factor in your favour is that you pleaded guilty, which he submits should discount 6 months off that 5 years leaving an imprisonment sentence of 4 years 6 months, but without any suspension allowed.

Consideration

- [14] When I read the probation report, it stated, from what I assume you told the probation officer, that your first offence was in 2000 for housebreaking and theft for which you were sentenced to 3 years imprisonment at the age of 14 years, although you only served 6 months and then the remaining 2 years 6 months were suspended. I was most concerned that you were sentenced to prison for a property offence, your first offence, at such a young age. I therefore asked Mr Fifita to give me all your record of your previous convictions. He provided them to me and it showed that that sentence in 2000 was your first offence. I was curious to find out why you were given such a sentence and so I got your files for the several offences which you committed in 2000. In one of those files, I found a record of your previous convictions. It showed that on 2 December 1997 you were convicted and sentenced for theft by being put on probation of good behavior not to commit any offence for 1 year. You then breached that probation by committing another theft and you were sentenced on 31 March 1998 to be whipped with 10 strokes. That appeared to work because you behaved. But in the year 2000 you committed housebreaking and theft in 7 houses, one of which was the Central Police Station in which you were being held in custody for the other 6 housebreaking cases.
- [15] In Court, you told me that you were still attending school and you were in class 6 at the Popua Primary School when you were sentenced to serve 6 months of your 3 year imprisonment sentence in 2000, and that your education was thereby disrupted for good. You told me, because the Court ordered that you were to reside with Captain Vasu of the Salvation Army at Vaini after you had served your 6 months, you went and lived with him but that he never put you back into school again. You told me that he had you working for him and the Salvation Army instead, mowing and cleaning the place and doing the cooking for the whole of the 2 and half years of the 3 year sentence. You told me you committed no offence at all in all that time, and that after you returned home to your parents, you then began re-offending again.
- [16] I now look at the probation report again and I note that you told the probation officer and he wrote the following:

"The accused quitted school at class 6 from the Popua Primary School. he shares that his reason for very early school dropout was based on peer pressure and running away from school.

He quitted school and he returned home and lived with his parent and was helping out with domestic duties.

Not long after he quitted school, the accused started to involve in criminal activities following the footstep of his older brothers that led him to prison in 2000 while he was 14 years old."

So that it would appear that you had already left class 6 well before 2000. You would have had to be in class 6 when you were 12 years old in 1998. You could not still have been in class 6 in 2000 at age 14. And in 1999, when you were 13 years of age you were legally entitled not to be forced to go to school and you did not go to school. You did not want to go to school. You wanted to go with others and break into other people's houses and steal instead, and you did, and you have not changed that aim of yours up to now.

Miseries cause

- [17] You cannot deny, and you cannot pretend not to know, the miseries of all the people whose houses you have broken into and whose properties you have stolen from there. All those people have suffered. They had worked hard to earn those properties. They were entitled to have them. They have the legal and constitutional right to own those properties. Clause 1, the very first clause, of the *Constitution* says so. It provides:

"1 ... And all men may use their lives and persons and time to acquire and possess property and to dispose of their labour and the fruit of their hands and to use their own property as they will."

Government to protect their property

- [18] The Constitution also provides for the protection of those properties of the people. It provides that the Government shall protect the properties of the people. Clause 18 provides:

"18. All the people have the right to expect that the Government will protect their life liberty and property and therefore it is right for all the people to support and contribute to Government according to law ... "

- [19] The Magistrate Court, this Court (the Supreme Court) and the Land Court and the Court of Appeal are part of the Government because the Constitution itself provides that they are. Clause 31 provides:

"31. The Government of this Kingdom is divided into three bodies -

1st The Cabinet;

2nd The Legislative Assembly;

3rd The Judiciary."

- [20] To protect the life, liberty and property of the people, the King and the Legislative Assembly have enacted the Criminal Offences Act to make it a criminal offence to break into people's houses and steal their properties, and to punish the offenders by sentencing them to prison for up to 10 years. Laws have been made that the police prosecute the offenders before these Courts and that these Courts order the punishment of the offenders if they are found guilty of the offences, in order that the properties of the people are thereby protected.
- [21] Sione Mafi Lolohea you have knowingly committed all those 37 offences which are shown in your record of previous convictions, some 21 of them have been housebreaking and thefts. You have caused so much misery and sorrow to so many people over so many years and it is clear from the probation report that you have made housebreaking and theft your means of livelihood every time you come out of prison.
- [22] I and this Court have the duty, as the Constitution has directed, to protect the property of the people, and that protection can only be achieved if you are incarcerated in prison by a sentence of imprisonment, and that protection only lasts until you come out again, because you will go right back into an unattended house and break into it and steal what you can from it again.
- [23] You have shown that in this present incident. You learned whilst you were in prison that the house of the Senior Warden at Ha'ateiho was full of the wife's Tongan artifacts and was unattended because the wife was overseas and the warden was in the prison compound at Hu'atolitoli. So when you were released from prison at the end of your prison sentence, you hired a motor vehicle and went to Ha'ateiho and cleaned out all the wife's properties. I can only imagine the grief and despair that the warden and his wife suffered. But you did not and you do not begin to have any such feeling. If you did you would not have done it. It was a grievous and substantial loss to them – a total of \$19,400 worth of properties lost and gone.

Sentence

- [24] I consider that I will fail in my duty, which is to protect the property of the people, if I do not sentence you to a sentence which is befitting your offence of serious housebreaking and of the theft you committed and at the same time protect the properties of the people. I consider that such sentence should be at least three-quarters of the maximum sentence provided by the law applicable to your offences.

[25] Accordingly, I sentence you as follows:

Count 1, for the serious housebreaking offence, you are sentenced to 7 years 6 months imprisonment.

Count 2, for the theft offence, you are sentenced to 5 years 3 months imprisonment.

Both sentences are to be served concurrently and are to commence at the end of your current imprisonment sentence.

Nuku'alofa: 19 June 2020



A handwritten signature in blue ink, appearing to be "Niu J", is written over the right side of the seal.

Niu J

J U D G E