

Sum and Lili.

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

CR 101 of 2020

REX
-v-
FILI LANGI TA'AI

SENTENCE

BEFORE: LORD CHIEF JUSTICE WHITTEN
Counsel: Mr T. 'Aho for the Prosecution
Mr S. Tu'utafaiva for the Accused
Date of arraignment: 14 May 2020
Date of submissions: Pre-sentence report, 11 June 2020; Crown, 12 June
2020; Defence, 24 June 2020.
Date of sentence: 25 June 2020

The charge

1. On 14 May 2020, the defendant pleaded guilty to one count of bribery of a member of Tonga Police contrary to s.165 (2) of the *Tonga Police Act* which provides:

A person commits an offence if the person arranges for another person to give, or to offer to give, to any member of Tonga Police, or to a person performing functions on behalf of Tonga Police, any money or other benefit as an inducement to do or refrain from doing any act in the execution of the police officer's duty as a member or in the performance of the person's function on behalf of Tonga Police.

Circumstances of the offending

2. On 23 May 2019, the defendant was arrested in relation to a drug-related group criminal activity and remanded in custody. That prosecution is still pending before the Magistrates Court.
3. On a number of occasions whilst in custody, the defendant asked the complainant, a police officer, whether there was any other way he could be granted bail.
4. On or about 3 July 2019, the defendant arranged for Pelinita Langi to take a box

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of chicken, a six pound can of corned beef and some sweet potatoes to the complainant's home in Fanga. She dropped the food off at the complainant's home and as he called out to her asking who it was from, she told the complainant it was from the defendant. The complainant then contacted the police and told them what had happened.

5. On 7 July 2019, Pelinita visited the defendant again in custody and told him that she had given the food to the complainant. The defendant thanked her.
6. The food items were valued at approximately \$190.
7. The defendant remained on remand in custody on the drug related charges until he was granted bail on 3 September 2019.

Crown submissions

8. The Crown submits the following as aggravating features:
 - (a) bribery of police officers "is an evil practice which threatens the foundation of any civilised society" (*R v Alalea* [2020] TOSC 10 at [37]);
 - (b) this was a deliberate attempt by the defendant to try to get the police officer to act in a manner contrary to his oath of office and release the defendant; and
 - (c) because police officers hold a very important role in society, deterrence requires that any attempt by members of the public to bribe police officers be met by strong reaction from the courts.
9. The mitigating features are that the defendant:
 - (a) has no previous convictions;
 - (b) pleaded guilty at the earliest opportunity; and
 - (c) is remorseful.
10. Offending of this nature is rare in Tonga. The Crown provided only two domestic comparative sentences.
11. In *R v Nausaimone Kitekeiaho* (CR 36 of 2015), a police officer had just completed executing a search warrant at the accused's residence, and found nothing incriminating, when the accused offered the police officer \$2,000 not to search the accused's mother's house because he had hidden a bag of cannabis there. Police searched the accused's mother's house and found 3.8 kg of cannabis inside her bedroom. The accused admitted to police that the

cannabis belonged to him and that he had hidden it inside his mother's house. He was convicted following a contested trial. In sentencing on the bribery charge, Cato J imposed a starting point of 2.5 years imprisonment. That was reduced by six months for mitigation. His Honour then added one year from the resulting two years for the bribery charge to the possession charge resulting in a total operative sentence of three years and nine months imprisonment. Because the accused did not express any remorse and maintained his innocence despite the overwhelming evidence against him, no part of the sentence was suspended.

12. In *R v Alalea* [2020] TOSC 10, the defendant was a serving police officer who attempted to bribe another police officer by giving him \$2,000 on behalf of an acquaintance for the latter to take drugs from the police exhibit room because there was a 'shortage everywhere'. After consideration of a number of Australian and New Zealand decisions, a starting point was set at two years but uplifted by another two years for the particular circumstances of aggravation in that case namely that the defendant was a serving police officer at the time and that the object of the bribe was to illegally obtain illicit drugs which had been seized by police from other operations. The resulting starting point was therefore four years. That was reduced by 12 months on account of the Defendant's early guilty plea, previous good record and reported remorse. The last 12 months of the sentence were suspended for a period of two years on conditions.
13. The Crown submits that in this case:
 - (a) bribery of a police officer is a serious crime because it strikes at the integrity of our system of justice;
 - (b) it is appropriate to impose a custodial sentence;
 - (c) an appropriate starting point is two years imprisonment;
 - (d) a discount should be allowed by way of mitigation on account of the defendant's early guilty plea and previous good record;
 - (e) having regard to the principles in *Mo'unga v R*, the low value of the bribe, the defendant's remorse and the family and community support as some basis for optimism that the defendant might take any opportunity provided by his sentence to rehabilitate himself, the sentence should be fully suspended; and
 - (f) the conditions of suspension ought include 80 hours of community service.
14. No order for forfeiture is sought because the items were perishable and they

have already been destroyed.

Presentence report

15. The defendant is 57 years of age. He is a husband and a father who works to contribute financially for his family. He is reported to have expressed remorse and deeply regrets what he did as reflected in his plea of guilty at the first opportunity. The defendant used to travel overseas as an integral member of the Tonga cup football Association. A number of character references have been provided.
16. One is from his wife. They have been married for almost 9 years. She is a civil servant working at the Ministry of Revenue and Customs. She described her husband as unhealthy in that he is suffering from diabetes which requires him to take medication at certain times as prescribed by his doctor. He operates a family business involving rentals and financial services to support their family as well as those who need help. They have children and grandchildren in their guardianship. She described her husband as a trustworthy hard-working man. He is also said to be religious.
17. The defendant's church pastor describes the defendant as very reliable, trustworthy, supportive with demonstrated leadership abilities. He was appointed a church leader for the new Seventh Day Adventist Church at Puke and has been serving tirelessly to support that church project. The Pastor is confident that the defendant will change his life and continue to support the work of the church and his family.
18. In his capacity as President of the Tonga Football Association, Lord Ve'ehala wrote that since 2015 the defendant was elected as chairperson of the Association's technical standing committee and also as a member of the executive. His involvement with the Association has seen him travel overseas on a number of occasions. He described the defendant as hard-working and loyal with strong values in developing a legacy of football in the Kingdom.
19. The Chief Probation Officer assessed the defendant's risk of reoffending as being very low. Further, by reason of:
 - (a) the offence being "trivial" as the defendant's intention was only to be released on bail, not to escape from custody;
 - (b) the "extenuating circumstances" in the defendant being in custody for almost four months as a suspect on charges, the future of which is still uncertain; and
 - (c) the consequences of a conviction reducing the defendant's opportunity to

be able to travel overseas with the Football Association in the future,
the author recommended a good behaviour bond for one year and/or a fine.

Defence submissions

20. Mr Tu'utafaiva accepted that the appropriate sentence is imprisonment but submitted that any term be fully suspended because:
- (a) the offence was committed to get bail, not to have the officer withdraw charges or any other more serious favour;
 - (b) the offending is at the lower end of the scale;
 - (c) the defendant pleaded guilty at the earliest opportunity;
 - (d) the defendant is remorseful; and
 - (e) the defendant is 55 years of age and has no previous convictions.

Starting point

21. Pursuant to s.165(3) of the Act, the maximum penalty upon conviction for this offence is a fine not exceeding \$25,000, or imprisonment for a period not exceeding 7 years, or both.
22. The relevant principles and approach to charges of bribing police officers were discussed in *Alalea*. In this case, it suffices to reiterate that bribery is always to be regarded as an offence which:
- (a) strikes at the very heart of the justice system and must be severely punished whenever it is detected (*R v Pangallo* (1991) 56 A Crim R 441 at 443); and
 - (b) warrants consideration being given to a sentence of imprisonment in all but the most trivial of cases (*Wilson v Tasmania* [2004] TASSC 98 at [10]).
23. For any property related offence involving goods of \$190 in value, a fine or other non-custodial sentence would be appropriate. However, for this offence, which involves dishonesty directed towards police officers, the maximum penalty of seven years imprisonment is a clear indication by Parliament of the seriousness with which the offence is to be viewed. It may be compared to other corruption related offences such as s.51 of the *Criminal Offences Act* - bribery of a government servant - which carries a significantly lesser maximum penalty of three years imprisonment.

24. I have not been moved by the plea that the purpose of the defendant's bribe was only to have the officer work on securing the defendant's bail. The offence arises whenever any person gives or offers to give any member of the police force any benefit as an inducement for the officer to do or refrain from doing any act in the execution of the officer's duty. It is not limited to inducing a police officer to do something unlawful.
25. Further, while the value and circumstances of the bribe place this case at the lower end of the spectrum for offending of this kind, it still involved a 'corrupt intention' as discussed by the Court of Appeal in *Attorney General v Tomasi* [2019] TOCA 19 with obvious forethought and planning by the Defendant arranging for Pelinita to procure and deliver the food. Therefore, I do not consider it to be of a trivial nature sufficient to warrant a good behavior bond pursuant to s.198 of the *Criminal Offences Act*. A bond is also unlikely to affect deterrence.
26. For those reasons, I consider that in order to give effect to the legislative intent and the critical need for deterrence, an appropriate starting point is 12 months' imprisonment.

Mitigation

27. On account of the defendant's early guilty plea, previous good record and remorse, I reduce that starting point by three months resulting in a sentence of 9 months' imprisonment.

Suspension

28. Having regard to the considerations in *Mo'unga v R* [1998] Tonga LR 154, including his good record, remorse, family and community support, some diminution in culpability by reason of the lengthy period in which he was in custody on remand and his cooperation with the authorities, there is good cause for optimism that the Defendant will take the opportunity presented by a suspended sentence to rehabilitate himself. I also take into account his reported health problem.
29. Accordingly, the sentence will be fully suspended on conditions.

Result

30. The defendant is convicted of one count of bribery of a member of the Tonga Police contrary to s.165(2) of the *Tonga Police Act* and is sentenced to 9 months' imprisonment.
31. The sentence will be suspended for a period of 12 months on conditions that,

during that period of suspension, the defendant shall:

- (a) not commit any offence punishable by imprisonment;
 - (b) be placed on probation;
 - (c) report to the probation office within 48 hours; and
 - (d) perform 60 hours community service as directed by his probation officer.
32. The defendant is advised that if he breaches any of those conditions, he will be brought back before the court, whereupon he may be ordered to serve his full prison sentence.



NUKU'ALOFA
25 June 2020

A handwritten signature in blue ink, appearing to read "M.H. Whitten", is written over the seal.

M.H. Whitten QC
LORD CHIEF JUSTICE