

there together with others late in the night. You, Sakopo, had 2 packs of meth which when weighed came to 0.38 gram, and you, Havea, had 1 pack of meth which weighed 0.11 gram.

[2] Mr. Samani has helpfully and properly referred to 3 cases and the sentences imposed on the offenders there:

- (a) **Tengange Case** (CR 231/2019), in which the accused in that case was found in possession of 0.35 gram of meth. He had had no previous conviction and he pleaded guilty. He was sentenced to 6 months imprisonment but which was fully suspended for one year on condition:
 - (i) he was not to commit an offence punishable with imprisonment during that one year,
 - (ii) he was not to consume any drug rehabilitation of the Salvation Army, and
 - (iv) he was to work 30 hours of community service.
- (b) **Haghi Case** (CR 26/19), in which that accused had 0.86 gram of meth. He pleaded guilty and he had no previous conviction. He was sentenced to 9 months imprisonment but which was suspended on condition:
 - (i) he did not commit an offence punishable with imprisonment the period of suspension,
 - (ii) he was not to consume drugs during the period of suspension,
 - (iii) he was to attend a course of drug rehabilitation of the Salvation Army, and
 - (iv) he was to work 45 hours of community service.
- (c) **Unga Case** (CR 28/2019) in which that accused, a woman, had 0.47 gram of meth. She pleaded guilty and she was also a first offender. She was sentenced to 8 months imprisonment, but fully suspended on condition:

- (i) she was not to commit any offence punishable by imprisonment during the period of suspension,
- (ii) she was not to consume any drug during the period of suspension,
- (iii) she was to attend a course of drug rehabilitation of the Salvation Army;
- (iv) she had to perform 40 hours of community service.

[3] Mr. Samani also referred to **Mo'unga's Case** [1998] Tonga LR 154 where the Court of Appeal laid down the criteria for suspension of an imprisonment sentence, namely:

- (a) where the offender is young,
- (b) has no previous conviction or has had a long period free of criminal activity, and
- (c) where he is likely to utilise the opportunity and rehabilitate his life,
- (d) and if there was some diminution of culpability because of lack of premeditation, or of provocation, or coercion by a co-offender,
- (e) where he has cooperated with the authorities.

Sakopo

[4] He says that you, Sakopo, had a previous case in which you pleaded not guilty and you were tried and convicted of possession of 0.72 gram of meth (case no CR146/18) and that on 5 July 2019 you were sentenced for that offence to 10 months imprisonment, but that sentence was suspended on several conditions, one of which was you were not to commit an offence punishable by imprisonment within the period of suspension.

[5] Whilst you were on that suspension, you committed two other offences for which you were charged and you pleaded guilty to possession of 6.69 grams of cannabis (CR686/2019) and to

possession of cannabis of 0.12 gram of cannabis, in November 2019. You thereby breached the condition of the suspension of your 10 months imprisonment sentence, and so you were ordered to serve that sentence which Mr. Samani estimates would be completed in September this year.

- [6] He says that because you thereby have recent previous convictions, and because you have breached the condition of suspension you were given in your previous sentence, you are not eligible to be granted suspension of your sentence in the present case. He says that you should have a starting point of 12 months imprisonment which should be reduced to 6 months in view of your guilty plea and cooperation with the authorities, and that you serve that 6 months imprisonment when your present sentence is completed.

Havea

- [7] As for you, Havea, Mr. Samani says that your offence is in line with the offences, and the sentences, in the 3 cases he referred to and that you should be sentenced to 8 months imprisonment, but fully suspended for 1 year and to be on the same conditions as were imposed in those cases but that the condition of community work be not applied in your case because your work for the Water Board would not allow you the time off to serve the community work on Saturdays.

The Probation Report on Sakopo

- [8] In your case, Sakopo, Ms. 'Ilaisaane Fifita, probation officer, says that you are 35 years old and that you are addicted to drugs and that you were involved a lot in working as an illegal drug dealer in buying and selling drugs to earn income for yourself. You even left your husband and children and your parents to live elsewhere so that you would freely carry on your trade as dealer, namely the "hooking up" of the drug users with the drug suppliers for money, that is, quick and easy way of earning money. Ms. Fifita considers that you are a very dangerous woman and that you pose a threat

to the peace and safety of the society. She says that you appear to show no remorse for what you have done and says that this Court should consider a sentence of imprisonment for you.

The Probation Report on Havea

- [9] In your case, Havea, Mr. Patelesio Pale, probation officer, says that you are 31 years old and that you now work for the Tonga Water Board, since October 2018, operating its excavating machinery, and that you also provide plumbing services when required. He also says that you are also a mechanic having qualified from the Fokololo automotive mechanic course in 2012. You are still single, living at home with your mother and with your younger siblings whom you have helped with their maintenance and schooling.
- [10] Attached to the report are letters of praise and support written by the Minister of your church. He says that you are participating in youth programmes and camps, as well as bible group and youth choir, and you even represent your youths in gatherings of the main church. He even acknowledges your help with the fixing of machinery at the Hango agricultural college of the Church at 'Eua, as well as the machinery and equipment here in Tongatapu.
- [11] Your employer has also written in your support. Its CEO has written that you have demonstrated a high degree of commitment to your work. He says that you are self-motivated and that you take on extra responsibility without supervision, and that you are honest, pleasant and reliable and you are an asset to the Board.
- [12] Your town officer also says that you help with and are active with the village cleanings and the annual yam plantings (toutu'u). He says you are honest, humble, hardworking and trustworthy.
- [13] Mr. Pale says that you are truly remorseful for what you have done and that you would, if given the opportunity, rehabilitate yourself.

Court hearing

: Sakopo

- [14] When the hearing was held in this Court on 17 June 2020, you both spoke to me and I asked you questions which would assist in considering the sentence to be imposed on you.
- [15] In your case, Sakopo, you said that your present sentence of 10 months imprisonment was imposed by the Magistrate's Court. That is of course not correct. It was imposed by the Supreme Court and suspended by that Court on condition which you breached by committing an offence punishable by imprisonment, namely, the possession of cannabis, during the period of suspension. You pleaded guilty to that offence of possession of cannabis in the Magistrate's Court and the Magistrate's Court had no choice but to order the suspended sentence of 10 months imprisonment to be served.
- [16] You asked me that you be sentenced for this offence of possession of meth to imprisonment and that you serve it concurrently with your present imprisonment sentence of 10 months. You told me that your 10 months sentence will be completed on 6 November 2020.
- [17] I asked you and you told me that you are one of 8 women in the women's prison at Hu'atolitoli, and that you are the only one there with a drug conviction. You said that your addiction to drug could be stopped and that you have had it stopped. You said that your craving for the drug was bad for the first week but that it then eased off and from then on you have no craving for the drug. You also told me that you had words of teaching and encouragement given to you each day when you had your morning and evening prayers.
- [18] At the end of your representations and questioning, I asked Mr. Samani, and he said that he had no objection to either having your

sentence served concurrently with your present sentence or with having it suspended.

: Havea

- [19] As for you, Havea, you said that your correct surname was Havea, not 'Ahio, as is in your indictment, and I accepted that and corrected your surname accordingly.
- [20] You said that you agreed with the recommendation of the Crown, that is, 8 months imprisonment but fully suspended without the condition for community service.
- [21] I asked you and you honestly told me that after this offence happened in December 2018, you again had meth in March 2019 and cannabis in January 2020, and have had no drug since.
- [22] I asked you whether it might be better that you be sentenced to serve your prison sentence so that you would be sure to have no access to drugs, but you said that you would be sure to be have no access to it whilst being out of prison.

Consideration

- [23] All illicit drugs, including meth and cannabis, are a curse in all societies throughout the world, and its terrible effect comes home to us with the spread of COVID 19 Corona Virus that we now face. You just have to have one person with the virus in the country and the whole country is infected. You just have to have one person with the drug meth and the whole country is infected with addicts and users.
- [24] That is shown in both of you. You Sakopo were so addicted you just became useless as a mother, let alone a wife. You cannot carry out your work. You become useless. You cannot work to earn anything to feed yourself or your children. All you needed was to have more drugs. You then dealt with the drug suppliers, in return for drug for you to use for free, you provide names and telephone

numbers of persons who wanted to buy drugs to those suppliers.

[25] The same goes for you, Havea. You were caught in December 2018 and in March 2019, you were at it again, and again in February this year. But whereas Sakopo was totally unable to continue to work, you Havea continued to work and maintain your commitments to work and to your family.

[26] I am guided by the cases which have been referred to by Mr. Samani and I have to apply the principles they have laid down in order that this curse upon the country is lifted and removed. I am also mindful of and I am grateful to the probation officers for their recommendations, as I am of Mr. Samani's suggestions.

[27] I believe and I consider that you, Sakopo, although now 35 years, is still of a young age and of disposition to rehabilitate yourself, as it now appears from your answers to me in Court, and despite your previous convictions. You now know the consequence of breaching of a suspended sentence of imprisonment. I believe and I consider that despite the relatively small amount of meth found on you, I accept the view of Ms. Fifita, probation officer, that you are dangerous. That means that you have manifested traits that you would, if given the chance, resume to deal and take drugs again. I have to take that into account.

[28] As for you, Havea, I consider that you, by your admission, have taken drugs twice since you were caught with the meth for which you are now sentenced, but I must not sentence you for that. I must deal with you as a first offender such as Mr. Samani and Mr. Pale have intimated.

Conclusion

[29] Accordingly, I sentence you as follows:

- (a) **'Alapasita Sakopo**, you are sentenced for the unlawful possession of 0.38 gram methamphetamine on 22 December 2018 at Hofoa to 2 years imprisonment, which

shall be suspended for 2 ½ years from today. If you will commit another offence punishable by imprisonment within that period of suspension you shall be ordered to serve this sentence of imprisonment of 2 years, unless there are special circumstances shown to the Court that the suspension may be extended for a further period not exceeding 1 year.

- (b) **Kisepi Havea**, you are sentenced for the unlawful possession of 0.11 gram methamphetamine on 22 December 2018 at Hofoa to 6 months imprisonment, which shall be suspended for 1 year from today. If you will commit another offence punishable by imprisonment within that period of suspension you shall be ordered to serve this sentence of 6 months imprisonment, unless there are special circumstances shown to Court, that the suspension may be extended for a further period not exceeding 1 year.

[30] I trust that you are both now aware of the seriousness of the possession and use of drugs and that you will both keep yourselves clear of them from today for the rest of your lives.

NUKU'ALOFA: 1 July 2020.



A handwritten signature in black ink, appearing to be "Niu J", is written over the seal and extends to the right.

**Niu J
JUDGE**