

Sean and F. L.

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

CR 27 of 2019

REX

-V-

MA'ATA POUONO

BEFORE HON. JUSTICE NIU

**Counsel : Mr. F. Samani for the Crown.
Mr. S. Fili, for the accused.**

**Probation Report: By 'Ilaisaane Fifita, Probation Officer on 11
August 2020.**

**Submissions : By Mr. Samani on 14 July 2020.
by Mr. Fili on 25 August 2020.**

Sentencing : 8 September 2020

SENTENCING

[1] Ma'ata Pouono, you were to have been sentenced on 28 July 2020 but I was not satisfied with the thoroughness of the probation report prepared and I directed that another report be carried out. I now have that report and I am grateful to Ms. Fifita for having prepared it.

Offences

[2] You now appear for sentence for two offences which you committed on 17 May 2018. The first is that you possessed 2 packs of methamphetamine which weighed 0.18 gram which you had hidden

by putting them in a plastic bag and wrapping up the plastic bag in a dirty diaper, which you put half way down your rubbish bag together with other dirtied diapers and other garbage up near the top of the bag. You kept the rubbish bag inside your house by the back door. The police were told by an informer that that was where you hid the drug, and the police found it there.

- [3] The second offence is that you told the police who arrested you and who were taking you to the Nuku'alofa police station to charge you for possessing those 2 packs of methamphetamine, that they could keep the money they had found in your wallet and which they were taking with them which was \$1,366 for themselves, and to let you go home to your children. You thereby committed the offence of bribery of a member of the Tonga Police.

Probation report

- [4] You told the probation officer that you were born at Ha'apai, the eighth of eleven children, and that you lived with your parents at Nomuka. You went to St. Joseph school there until you were in form 3 when your parents migrated to Tongatapu. You then attended Liahona High School but you left school at form 4 to help your mother at home.
- [5] At about age 18 you met your husband, Tomu Pouono, and had 3 daughters to him before you married him. You then had 11 children thereafter, the youngest being born in September 2019, the eldest of whom being another daughter. Three of your 4 eldest daughters are married, one of whom lives at Haveluloto with her husband and one child, one lives at Afa with her husband and two children and the third lives in New Zealand with her husband and three children. The fourth daughter lives at Kolomotu'a with your sister. She is not married. That sister and that daughter have raised your second youngest child who was born on 8 May 2018.
- [6] You now have 9 children living with you and your husband at home at Lapaha, 3 of whom are at the Government primary school at Lapaha and 4 are at the Takuilau College at Lapaha and the only

child at home with you is the baby which was born in September last year. Your eldest boy is now helping your husband in the plantation.

- [7] You are 46 years of age and your husband is 49 years of age. Your husband used to fish and you used to make tapa cloth for your livelihood but now your husband and your eldest son, who is now going on 20 years of age, is now helping him with the farming. You assist by selling items at the "fair" on Saturdays which have been sent from your daughter in New Zealand.
- [8] You have only been doing that in the past year or so and already you have earned much more than you have earned from the fishing of your husband and from your tapa making. You say that the sales of crops bring about \$800 every Saturday and that the sales of the items at the fair on Saturdays bring about \$1,000.
- [9] The probation officer says that she saw your crops and the items at home in readiness for sale and she confirms your great industry at what you and your husband have done to make your life better for you and your children. She also says that the town officer has been impressed by the change which you and your husband have made in your lives for the better. Even the school teachers commend on the progress of your children at school. One of your children represents the school in the national abacus competition. Your Church bishop has also been impressed with the good change in both your lives.
- [10] As to your son, Sione, she says that he has been charged with possession of illicit drug and that his case is still in the Magistrate's Court.
- [11] As to your previous conviction, you were convicted of assault and you were fined \$200 in 2014.
- [12] As to yourself and the two offences of which I have found you guilty, she says that you still claim that you did not commit them, but that you have now accepted that you will bear the fact of your convictions because they would not have happened but for what your husband had done. She says that you do not appear to be remorseful at all.

[13] I wish, for the record, to say as follows:

- (a) When you gave evidence at this trial on 21 April 2020, you said that you were 8 months pregnant at the time that the police searched your house on 17 May 2018. You told me that when you were in the police cell, there were 4 other women with you and they smoked so you asked and you were transferred to another cell because you told the police that you were 8 months pregnant. It is now clear that you were not pregnant at all on that day because you had had your baby, Semisi, born on the 8 May 2018 – 9 days before the police came and searched your house and arrested you.
- (b) Your witness Lu'isa Falakesi Finau said in her evidence that when she came and paid you the \$1000 for your tapa cloth, she said that you were pregnant and that you were nearly due to give birth. If she was telling the truth, then she must have paid you the \$1,000 in the week you gave birth to Semisi or the week before it. That would mean you did not receive the \$1,000 from her on the afternoon of the evening the police came and searched your house (on 17 May 2018). You would have spent the \$1,000 or a good part of it when the police came on 17 May 2018. So the \$1,000 you said you were paid for your tapa could not still have been with you when the police came on 17 May 2018.
- (c) There was never any suggestion or cross-examination or even evidence from you that the rubbish bag was hanging on a nail on the outside of your house, such as you have now told the probation officer. The evidence given at your trial was that the rubbish bag was either hanging on a nail inside your house or was on the floor leaning against the wall by the back door inside your house. You now say the rubbish bag was hanging outside your house! There was no such evidence at the trial.

Crown submissions

[14] Mr. Samani for the Crown has referred to several cases in comparison to yours:

- (a) **R v Tengange** (CR231/2019) where the accused had 0.35gm of methamphetamine. He pleaded guilty. He was sentenced to 6 months imprisonment but which was fully suspended for 1 year on condition:
 - (1) he did not commit another offence punishable by imprisonment during that 1 year;
 - (2) he was not to consume any drug;
 - (3) he was to attend the drug rehabilitation course of the Salvation Army; and
 - (4) he was to serve 30 hours community service.
- (b) **R v Unga** (CR28/2019) where that accused had 0.47 grams of meth. She pleaded guilty and was sentenced to 8 months imprisonment but fully suspended on condition:
 - (1) she was not to commit an offence punishable by imprisonment;
 - (2) she was not to consume drugs during the suspension;
 - (3) she was to attend a course on drug rehabilitation of the Salvation Army; and
 - (4) she had to serve 40 hours community service.
- (c) **R v Kitekei'aho** (CR36/2015) where that accused had 3.8 kilograms of cannabis. He pleaded not guilty but was convicted after the trial. He was also convicted of bribery like you did in your case. He did not show any remorse and he continued to maintain he was innocent. He was sentenced to 3 years 9 months imprisonment and no part of it was suspended.
- (d) **R v Alalea** (CR22/2020) where the accused was a police officer who attempted to bribe another police officer with

\$2,000 to take drugs from the exhibit room. He pleaded guilty. He was sentenced to 4 years imprisonment but that the 4th year be suspended for 2 years.

- (e) **R v Ta'ai** (CR101/2020) where that accused had his wife take to the complainant's house \$190 worth of food to bribe the complainant, who was a police officer, to withdraw his complaint and have him released from custody. He pleaded guilty. He was sentenced to 9 months imprisonment but fully suspended for 1 year.

- [15] Mr. Samani recommended that you be sentenced to 1 year imprisonment for the offence of possession of 0.18 gm of meth and to another year of imprisonment for the offence of bribery so that you are sentenced to a total of 2 years imprisonment.

Defence submissions

- [16] Your counsel, Mr. Fili, has pointed out that although you have a previous conviction, it was only for assault and not for drugs and it has been 6 years that you have not committed another offence.
- [17] He submits that the appropriate sentence be a fully suspended sentence as were imposed in the cases of Tengange and Ta'ai, in view of the special circumstances you have, namely, you have 8 children to look after. He also points out that the amount of meth you had was minimal – being only 0.18 gm.

Consideration

- [18] In considering the sentence to be imposed on you I have to take into account several considerations:

Previous conviction

- [19] You have a previous conviction but as your counsel points out, it is for a minor offence of a different nature and it was 4 years before you committed these two offences. I can disregard your previous conviction in sentencing you for these 2 offences.

No remorse

- [20] You have shown no remorse or regret for what you have done. You have not repented and you have not accepted that you have done wrong. You have blamed your neighbour and told the probation officer that he planted the drug in your rubbish bag and then inform the police of it so that you be arrested for it. But you were the one who asked the police to keep the \$1,366 found in your wallet for themselves and not to take you and charge you for the drug found in your rubbish bag. Had they accepted, you would have been happy that they keep your \$1,366 as long as they did not charge you with the possession of the drug found in your rubbish bag. Luckily, they did not accept.
- [21] Yet you pleaded not guilty, not only to possessing the drug but also to the bribery which you committed by offering them the \$1,366 and after having been convicted, you still continue to say you have been wrongly convicted.
- [22] You do not seem to understand that when you do that you do not show any prospect of change in you not to reoffend in future. It would tend to show that if you are to be granted a suspended sentence, you would not honour it and you would be more likely to reoffend instead.

Seriousness of the offences

- [23] The offences you have committed are both serious offences. The drug offence is punishable by a fine of up to a \$1,000,000 or imprisonment of up to 30 years or both, and the bribery offence is punishable by imprisonment of up to 7 years or a fine of up to \$25,000 or both. That is demonstrated in the cases of **Kitekei'aho** and **Alalea** to which Mr. Samani referred. Kitekei'aho was sentenced to 3 years 9 months without suspension, and Alalea was sentenced to 4 years imprisonment with the final year being suspended for 2 years.

Rehabilitation

[24] I have to consider whether the whole or any part of the imprisonment sentence to be imposed upon you should be suspended and one of the main considerations is whether or not it is likely that you would respect that suspension and not reoffend during the period of suspension. If you do not reoffend it means you have changed from the life you had led to a law abiding life. You are said to have been rehabilitated. You are then forgiven for the offence you have committed and the suspended imprisonment sentence is then cancelled. But if you reoffend during the suspension, that means you are not rehabilitated and you are then ordered to serve the suspended sentence in addition to the sentence for the subsequent offence.

Mitigating and aggravating factors

[25] I also have to consider any mitigating factors in your favour as well as aggravating factors against you.

Conclusion

[26] Having considered all these considerations, and having considered the sentences imposed in the cases referred to and the reasons therefor, I consider that although you were in possession of only 0.18 gm, which is much less than the amounts in those cases, you did not plead guilty or show any remorse like the accused persons in those cases did. I therefore consider that you be sentenced to the same sentence as the accused Tengange was sentenced, namely, 6 months imprisonment.

[27] As for the bribery charge, I consider that you be sentenced to the same sentence to which the accused **Kitekei'aho** was sentenced, namely, 1 year imprisonment.

[28] And as was done in the **Kitekei'aho** case, the two sentences are to be consecutive, that is you are sentenced to 1 year 6 months imprisonment for the two offences.

[29] As to suspension of that sentence, I accept what the town officer, the bishop and school teacher have said about the change which you and your husband have made to your lives for the better already. You have both now made great changes to your life by working hard at your plantation and at the fairs. And most importantly you have brought up and educate your children properly, and I have to trust you will continue to do that with them all. You have shown rehabilitation that I can trust.

[30] I therefore consider that you would respect and comply with a fully suspended sentence, and because of your commitments during the weekends, I do not consider that it would be appropriate that you serve any community service.

Orders

[31] Accordingly, I sentence you as follows:

(a) Count 1: Possession of the illicit drug of 0.18 gm methamphetamine, you are sentenced to 6 months imprisonment.

Count 2: Bribery of a member of the Tonga Police, you are sentenced to 1 year imprisonment.

(b) Both sentences are to be consecutive so that you are sentenced altogether to 1 year 6 months imprisonment.

(c) The whole of your imprisonment sentences of 1 year 6 months are fully suspended for 2 years from today, upon the condition that you do not commit an offence punishable by imprisonment during the period of suspension.

(d) The drug in respect of which you have been convicted shall forthwith be destroyed by the police.



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NUKU'ALOFA: 8 September 2020.