

File & Rec. Crown

IN THE SUPREME COURT OF TONGA

CRIMINAL JURISDICTION

NUKU'ALOFA REGISTRY

CR 184 of 2019

REX

-v-

SIONE TUPOU TONGA

BEFORE : **HON. JUSTICE NIU**

Counsel : Mr Fatai Samani for the Crown
Ms Alyssa Kafoa for the Accused

Probation Report: by Henele Telefoni filed 14 September 2020

Submissions : by Mr Samani filed on 21 September 2020
by Ms Kafoa on 30 September 2020

Sentencing : 12 October 2020

SENTENCING

- [1] Sione Tonga, you have pleaded guilty to serious housebreaking and to theft of goods worth \$4,200. You now appear before me to be sentenced for those offences.
- [2] The offences happened in the early hours of 16 March 2019 at Fangaloto where the complainant lived and where you also lived. At about 3am the complainant and a friend were finishing their drinks at the complainant's house and they went to sleep. You had also been drinking and were still awake and wanted to drink some more but you had run out. You then went to the complainant's house and broke into it and stole a mobile phone, a laptop and 4 sleeves of cigarettes – altogether valued at \$4,200 – while the complainant and friend were sleeping.

*rec'd 12/10/20
MC*

- [3] When the complainant and friend woke up the next morning, they found those items missing. The friend went out and inquired at the neighbours as to whether anyone had seen anyone who might have stolen them. She just so happened to see you walking along the road carrying the missing mobile phone of the complainant, and she contacted the police. The police then came and arrested you and you then gave them the phone, the laptop and the sleeves of cigarettes.

Probation Report

- [4] The probation officer, Henele Telefoni, states that you are 24 and you are unmarried and you have a permanent job at a scrap metal workshop earning \$200 per week. You give \$150 to your parents to help the family income of weaving to feed the family and education of your 3 younger brothers. You keep \$50 for your personal needs, one of which appears to be drinking.
- [5] The officer says that you had left school at form 4 because your parents could not afford to pay your school fees and you then stayed home to help your parents. You however took up drinking which you told him gets too much and you black out sometimes. He says you told him that on this night you were drinking and you went to look for more to drink and you went and committed this offence.
- [6] He says that you have a previous conviction but does not say what for or when, but says that you told him that you are very sorry for what you did this night and that you told him that you would never re-offend again in future. He also says that you agree to take the alcohol awareness course of the Salvation Army to help and ensure you do not have anymore problem with drinking.
- [7] He recommends that you be given a suspended imprisonment sentence because of the seriousness of housebreaking and theft but subject to attending the alcohol awareness course and also to doing community service.

Crown submissions

- [8] Mr Samani agrees with the probation officer. He says that you have a previous conviction for housebreaking in 2011 and you were given a probation of 12 months. He refers to three cases similar to your present case where imprisonment sentences were suspended on condition of community service. He recommends that you be given 1 year imprisonment sentence but suspended for 2 years on condition you serve 100 hours of community service and that you attend the drug and alcohol awareness course of the Salvation Army.

Counsel submission

- [9] Your counsel, Ms Kafoa, agrees with both the Probation Officer and with Mr Samani that you be sentenced as they have recommended.

Previous conviction

- [10] There is no detail given about your previous conviction except the case no.314/2011 in the Magistrates Court for housebreaking and your sentence was 12 month probation of good behavior. You obviously complied with that sentence because you had no offence after that until March of last year when you committed the present offences. You thereby kept out of trouble for some 8 years. I also note that you would have committed the offence in 2011 when you were 14 years old. Accordingly, because you were so young then and you had behaved and kept out of trouble in all that time I would treat your present offences as your first offence.

Remorse and contrition

- [11] I also find your remorse and contrition for this offending to be genuine. You readily admitted to the police what you had done and you returned all the properties which you took from the house and most importantly, you have pleaded guilty to these charges. You thereby show honesty. You have also apologised to the complainant for what you did and he has accepted it. You have told the probation officer that you would not re-offend and you would be law abiding again from now on. And I note, and I hope, you have not committed another offence since March last year when you committed these offences.

Your responsible attitude

- [12] I also find it very responsible and very mature of you to work hard and keep your job at the scrap metal workshop so that you can keep your younger brothers at school, so that they do not have to leave school like you did because your parents did not have the money to pay for your school. I find that very commendable of you, and I hope you will keep that up because you are an asset and a credit to your family, and in the near future, to your own wife and children.

Your drinking problem

- [13] However, your drinking problem must stop and you alone must stop it, otherwise, you will re-offend and you will appear before me again for sentence and again and again. You will then no longer be an asset and credit to anybody. You will become a shame to your family, and to yourself instead.

I agree with the probation officer, the Crown counsel and your counsel, that you need help with that and you need the help of the Salvation Army to overcome and ensure that you overcome that problem with alcohol. You must know that.

- [14] Alcohol is addictive. It makes you want to drink more and when you have no more and no money to buy more, you steal to buy more alcohol. You become a slave to alcohol. You not only become of no use to anyone, you become a menace to the people from whom you steal. You will also spend more, if not all, your weekly wages to buy alcohol. You will not be able to keep your young brothers in school. They will leave school like you did.
- [15] It is therefore imperative that you take and make full use of the Salvation Army course as I shall order that you do.

Community service and suspension of imprisonment

- [16] Crown counsel has recommended that you be sentenced to one year imprisonment for the housebreaking and to 6 months for the theft but that both sentences be concurrent so that you would serve 1 year only. He also recommends that that imprisonment sentence of 1 year be suspended for 2 years on condition that you serve 100 hours community service and to attend the alcohol and drug awareness programme of the Salvation Army. Your counsel agrees with that and I also agree with it.
- [17] That suspension will allow you to continue to work at your job during the week, and on Saturdays, you will work in the community at such jobs which the Probation Officer shall direct so that you serve a total of 100 hours. That has been the sentence to which persons convicted of housebreaking and theft have been ordered to do upon suspension of their imprisonment sentences instead, so that they do serve some penalty for the offences.
- [18] At the same time, it takes up the leisure time that you have so that you do not use it for drinking instead. Hopefully, you would, by the end of the community service, have settled down to an alcohol free and offence free life.

Not re-offend

- [19] You must understand that the suspension of your imprisonment sentence does not mean that you do not have to serve it. It means that you do not serve it if you do not commit another offence that is punishable with imprisonment within the 2 years your sentence is suspended. If you do not re-offend during the 2 years, the imprisonment sentence is cancelled. If you do re-offend within the 2 years, you will serve the 1 year imprisonment in addition to the sentence for the subsequent offence.

Orders

[20] Accordingly, I sentence you as follows:

- (a) For the offence of serious housebreaking, you are sentenced to 1 year imprisonment.
- (b) For the offence of theft, you are sentenced to 6 months imprisonment.
- (c) Both sentences are to be concurrent.
- (d) Both sentences are suspended for a period of 2 years from today, but subject to the following conditions:
 - (i) you will serve 100 hours of community work which the Probation Officer shall direct;
 - (ii) you will attend and complete the drug and alcohol awareness course of the Salvation Army;
 - (iii) you must not commit an offence which is punishable with imprisonment during the said period of suspension.
- (e) You will take a copy of this sentencing to the Probation Officer immediately after you leave this Court to arrange your community work and Salvation Army course.

Nuku'alofa: 12 October 2020



[Handwritten Signature]
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