

Sam + Kafoa

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

CR 124 of 2020

REX

-V-

SIONE VASI

BEFORE HON. JUSTICE NIU

**Representation : Mr. F. Samani for the Crown.
Ms. A. Kafoa for the accused.**

**Submissions : by Mr. Samani on 3 December 2020.
: by Ms. Kafoa on 26 January 2021.**

Sentencing : 10 February 2021.

SENTENCING

Offence

- [1] Sione Vasi, you committed the offence of possessing an illicit drug namely, 2.8 gm of methamphetamine at 'Utulau on 28 July 2018. You admitted committing that offence by pleading guilty to it in this Court on 29 October 2020.
- [2] The police had reasonable grounds to suspect that you had illicit drugs in the tax allotment at 'Utulau where you reside. They obtained a search warrant and they came to the tax allotment and found the 2.8 gm of methamphetamine in a bag which was yours.

Your circumstances

- [3] You are 35 years of age and you are the eldest of 10 children of your parents. You attended Liahona High School but you left when you

were in form 5 no doubt to help your father in the plantation. Your parents and all the other children migrated to the U.S. and your father died there last year.

- [4] You committed two offences before, one in 2006 when you were 20 and were convicted of assault. You were fined \$100 and you paid another \$100 as compensation. The other was in 2009 when you were convicted of theft and you were fined \$50.
- [5] You were married in 2011 and you and your wife now have 4 children, the eldest being 8 years old and the youngest being 5. You earn your living by growing crops for your subsistence and for sale.
- [6] Unfortunately, you fell into company of persons who used drugs and from 2015 up to now you have been using the drug methamphetamine, because you say it gives you strength to do your work at the plantation. That was unfortunate because the drug is expensive, addictive and is very much unlawful, a very serious offence. It is punishable with imprisonment for up to 30 years or a \$1,000,000 fine or both. Anyone found in possession of it must expect a sentence of imprisonment.

Comparable cases

- [7] Mr. Samani for the Crown referred to several cases but I consider that only 2 are comparable to yours. The first is *R v Tu'inukuafe* (CR63/20) in which Tu'inukuafe was found with 1.58 gm of methamphetamine. He was a first offender and he pleaded guilty. He was ordered to sign a bond of recognizance of good behavior for 15 months, undertake a drug and alcohol awareness course with the Salvation Army and to serve 60 hours of community work.
- [8] The other is *R v Uasike* (CR161/19) in which Uasike was found with 3.48 gm of methamphetamine and 0.87 gm of cannabis. When arrested he offered a bribe to the police to release him. On the meth offence, he was sentenced to 2 years 6 months imprisonment. On the cannabis offence, he was convicted and discharged. On the bribery offence he was sentenced to 14 months imprisonment and to be added to the meth's imprisonment making a total of 3 years 8 months, with the last 12 months being suspended.

[9] Mr. Samani recommends that in your case, the appropriate sentence for you is 12 months imprisonment but with such suspension as this Court may consider appropriate.

[10] Ms. Kafoa, your counsel, agrees with that recommendation of Mr. Samani.

Consideration

[11] Although the weight of the drug involved is not the only consideration, it is the factor by which the law, the Illicit Drugs Control Act (as amended late in 2020) differentiates the more serious drug offences from the less serious drug offences.

[12] S.3(a) of the Act provides that if the class B drug involved (such as cannabis) is less than 28 grams, the maximum sentence is a fine not exceeding \$5,000 or imprisonment not exceeding 1 year or both. S.3(b) provides that if the class B drug is 28 grams or more, the maximum fine is \$50,000 or imprisonment not exceeding 7 years or both.

[13] S.3(c) now provides that if the class A drug involved (such as methamphetamine) is less than 1 gram, the maximum sentence is a fine of up to \$10,000 or imprisonment up to 3 years or both. If the class A drug is more than 1 gm, the maximum sentence is 30 years imprisonment or \$1,000,000 fine or both. If the class A drug is 28 gm or more then the imprisonment is for life.

[14] The Court, as in New Zealand, had classified the sentences according, generally, to the weight of the drug involved, like this:

band 1 (less than 5 grams) 2 – 4.5 years imprisonment.

band 2 (less than 250 grams) 3 – 11 yeas imprisonment.

band 3 (less than 500 grams) 8 – 15 years imprisonment.

band 4 (less than 2 kg) 10 – 30 years imprisonment.

band 5 (greater than 2 kg) 10 – 30 years imprisonment.

That classification still applies.

- [15] Your case falls within band 1: 2 – 4.5 years imprisonment. And the weight of the meth found in your possession was 2.8 grams, just above the half way mark of the maximum weight of 5 grams of that band. If 4.5 years is the appropriate sentence for 5 grams of meth, then 2.25 years may be the appropriate sentence for the amount of meth of 2.8 grams which you had in your possession.
- [16] I therefore consider that 2 years 3 months (2.25 years) (27 months) is the appropriate starting point for considering the appropriate sentence for you. To that starting point I would add what I would consider aggravating factors, and from that total I would deduct what I would consider mitigating factors, and then arrive at the final appropriate sentence for your offence.
- [17] Mr. Samani says that there are 3 aggravating factors against you, namely, (a) your offence was premeditated, (b) drug offending is an issue here in Tonga and, (c) the amount of the drug you had was a bit excessive. I am afraid I do not agree, for these reasons:
- (a) Premeditation: an offence of possession of a drug is always committed with premeditation because it must always require that the accused was aware and had the requisite knowledge that he had the drug in his possession. Otherwise, there would be no offence. It is therefore not an aggravating factor to have the drug in one's possession willingly or knowingly.
 - (b) Drugs are in issue in Tonga: This Act has been enacted with its very serious sentences for possession of methamphetamine because drugs are an issue in Tonga. Its serious sentences as I have outlined above have provided for that.
 - (c) The amount of drug was excessive: The band already set by the Court, as envisaged by the Act itself, has already provided for the amount of drug involved by slotting each particular amount into its appropriate band, with its corresponding imprisonment sentence level. It is not to be considered as an aggravating factor for which an added period is to be imposed.

[18] But he is quite right that there are mitigating factors in your favour and which may properly be considered in reduction of the starting point I have stated. He has listed these factors:

- (a) Remorse: He says that you have been remorseful for what you have done and that you have shown willingness to give up the drug and to undertake the Salvation Army course on drug awareness.
- (b) Guilty plea: You have pleaded guilty and that has saved the Crown the burden of prosecuting you and, more importantly, you have thereby shown remorse and willingness to change and be law abiding, and
- (c) No previous drug offence: I am willing to and I consider that your 2 previous convictions for assault and theft were done whilst you were young and foolish and unmarried, and to disregard them for the purpose of this sentencing. I consider this your first offence.

[19] Taking all those 3 factors into consideration I consider that a deduction of a total of 9 months from the starting point of 27 months is justified, leaving a final sentence for your offence of 1 year 6 months (18 months).

Suspension

[20] I now have to consider whether the whole or, part of that sentence is to be suspended. That largely depends on whether you are likely to make use of the suspension of your sentence or part of your sentence, that is, that you will change and be law abiding and never to return to this Court again.

[21] Your remorse, your clean drug record and your guilty plea and your willingness to undertake the drug awareness course do show me that you are likely to make use of the suspension of your sentence. I however consider that the suspension be as long as possible, that is for 3 years and that you should serve a period of community work.

Sentence

[22] I therefore make the following orders:

- (1) You are sentenced for the offence of possession of 2.8 gram of methamphetamine to 1 year 6 months imprisonment, but that the whole of that sentence is suspended for a period of 3 years from today upon the conditions that:
 - (a) you do not commit an offence punishable by imprisonment during those 3 years of suspension;
 - (b) you will take and complete the drug and alcohol awareness course of the Salvation Army;
 - (c) you will serve 80 hours community service as the Probation Officer shall direct.
- (2) You will go and see the Probation Officer immediately after you leave this Court this morning together with a copy of this sentencing for him to take a copy thereof and to arrange your attendance for the awareness course and the community work.
- (3) The police shall forthwith destroy the drug which is the subject of the charge against you.



Niu J

J U D G E

NUKU'ALOFA: 10 February 2021.