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

CR 328 of 2020

**REX**  
**-v-**  
**TAUFA LATUSELU**

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## **SENTENCING REMARKS**

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BEFORE: Lord Chief Justice Whitten QC  
Appearances: Mrs Aholeilei for the prosecution  
The Accused in person  
Date: 19 February 2021

### **The offending**

1. On 15 January 2021, the Defendant pleaded guilty to unlawful possession of 0.70 g of methamphetamine and 0.25 g of cannabis.
2. On 22 May 2020, the police drugs taskforce received information that drugs were being sold by the Defendant from Petelo Tu'ipulotu's residence at Ma'ufanga. When they arrived at the residence, police found the Defendant in his vehicle parked outside Tu'ipulotu's compound. A search of his vehicle without warrant was conducted. The Defendant was holding a black bag. Inside the bag, police found an iPhone. The iPhone was dismantled, revealing two packs of methamphetamine and two packs of cannabis inside.
3. On 31 May 2020, the Defendant was interviewed by police and admitted to the charges.
4. At the Defendant's arraignment, directions were made which included the preparation of a pre-sentence report. In order to prepare the report, the Defendant was required to attend the probation office within 48 hours. He failed to do so. The

Probation Office subsequently advised the court that as a result of having no contact with the Defendant, a pre-sentence report could not be prepared.

5. The provision of a pre-sentence report, particularly for a Defendant who is not legally represented, is offered to the Defendant as an opportunity to be heard and to assist the Court in gaining a better understanding of the Defendant's personal circumstances insofar as they may be relevant to the task of weighing competing considerations in order to arrive at an appropriate sentence which strikes the right balance between the objectives of sentencing, such as punishment, denunciation, protection of the community, rehabilitation and specific and general deterrence. I say 'insofar as is relevant' because as noted in *R v PMP* [2020] TOSC 112:

*"... since at least the decision in Veav v R [2004] TOLawRp 28, the Tongan Court of Appeal has cited with apparent approval the approach of the New Zealand Court of Appeal that 'personal circumstances are generally irrelevant when sentencing for drug offending': see e.g., see Huni [2018] TOSC 33 at [7]; Taulua [2018] TOSC 80; Wolfgramm [2020] TOSC 78 and Totau [2020] TOSC 95."*

6. However, if, for whatever reason, a Defendant chooses not to avail him or herself of that opportunity, that is a matter for that Defendant. Such a response also provides some insight into the Defendant's attitude towards the offending. Ultimately, and in the absence of exceptional circumstances, the lack of a pre-sentence report will not prevent or delay the Court performing its role in imposing an appropriate sentence, whether or not the Defendant wishes to be heard through a pre-sentence report.

### **Crown's submissions**

7. The Crown submits that:
  - (a) the aggravating feature in this case is the possession of both class A (methamphetamine) and class B (cannabis) drugs; and
  - (b) the only mitigating feature is the Defendant's early guilty plea.

8. The Defendant has one previous conviction for bodily harm in 2015. He does not have any previous convictions for drug related offences.
9. The Crown relied upon the following comparable sentences:
  - (a) *Bahnam Haghi* (CR 26/19) – the Defendant pleaded guilty to possession of 0.86 g of methamphetamine and was sentenced to 9 months' imprisonment, fully suspended on conditions.
  - (b) *Viliami Leka* (CR 15/20) – the Defendant pleaded guilty to possession of 0.61 g methamphetamine. Niu J sentenced him to 9 months' imprisonment, fully suspended for two years on conditions.
  - (c) *'Alifeleti Katoa* (CR 91/18) – Defendant pleaded guilty to possession of 0.76 g of methamphetamine and 16.76 g of cannabis. He was sentenced to 9 months' imprisonment for the methamphetamines and 6 months' imprisonment for the cannabis, to be served concurrently. Those sentences were fully suspended for 2 years on conditions.
  - (d) *Muimui He Lotu 'Amaka* (unreported, CR 214/20, 27 November 2020, Langi AJ) – upon being re-arraigned on the first day of his trial, the Defendant pleaded guilty to possession of 0.25 g of methamphetamine and 0.24 g of cannabis. He was sentenced to 9 months' imprisonment on count 1 and 3 months' imprisonment on count 2, to be served concurrently. The sentence was fully suspended for 2 years on conditions.
10. In this case, the Crown proposes a custodial sentence, fully suspended on similar conditions to those imposed in the above cases.

### **Starting points**

11. For offences occurring prior to 8 December 2020, s.4 of the *Illicit Drugs Control Act* provides maximum penalties for possession of Class A drugs, such as methamphetamines, of a fine not exceeding \$1 million or imprisonment for 30 years (or both); and for possession of Class B drugs, such as cannabis, less than 28

grams, of a fine not exceeding \$5,000 or imprisonment for 1 year (or both). Here, the methamphetamines count is clearly the head offence.

12. As Langi AJ said recently in *R v Moli* [2020] TOSC 107:

*“15. ... the court’s attitude to drug offending has been well publicised and everyone in our community should be aware of it by now. It is no secret that our small island Kingdom is currently feeling the effects of the insidious nature of methamphetamine and the danger it poses. It is a grave concern to the courts to see such an increase in the number of cases coming before us involving methamphetamine. This drug seems to be the flavour of the moment for those who can afford it. A dangerous and alarming trend which has been commented on by the courts in previous cases such as R v Ngaue [2018] TOSC 38: Criminal Case 6 of 2018 (2 August 2018), R v Maile AC 23/2018, R v Vilimoa Afu CR 177/2020, to name only a few. As a result, the courts have quite properly taken a tough stance in relation to people coming before it involved in the use or distribution of methamphetamine.*

*16. The unequivocal message that must be sent out to the youths and the people who use or deal with illicit drugs is that if you involve yourself in drug offending you will receive an imprisonment term as a general rule and the only question for the judge is how long is appropriate. Indeed, this was the position of the Court of Appeal in Maile which was emphasized and restated by LCJ Whitten in Afu.”*

13. Although this is the Defendant's first detected drug-related offence, I record my concern at the information to police, a fact admitted by the Defendant's guilty plea, that he was reportedly selling drugs from or outside Petelo Tu'ipulotu's residence. Supply is to be regarded as a more serious and insidious crime than mere possession for personal use. Apart from the minority of cases involving self-production for personal use, illicit drug use leading to almost universal and inevitable addiction is not possible without the supply of those drugs. It is also suppliers who facilitate and spread the destruction caused by drug use and abuse, usually for their own financial gain, in return for the eventual, and often irredeemable, suffering of drug users and often their innocent family members.

14. In acknowledgment of the superadded evils committed by those who supply drugs, in *R v Kalonihea* [2020] TOSC 68, I stated:

*“19. ... for first offenders on possession charges, the court should endeavor to afford the Defendants a chance of rehabilitation. The same may not be said for those who engage in trafficking or supply of any amounts, even if they are first offenders.”*

15. On 8 December 2020, the *Illicit Drugs Control (Amendment) Act 2020* came into force. Among the amendments, s.4(2)(b) of the Act, now deems possession of 0.25g or more of methamphetamine to be supplying. Such is Parliament’s determination to protect Tonga from this scourge. It is also a directive to the Courts to respond to in sentencing of methamphetamine cases, especially for supply, with even greater exigency.
16. While the offending in the instant case occurred prior to the amendments and the Defendant has only been charged with possession of 0.7 grams of methamphetamine, the above ought be a salient reminder that if the same offending occurred post the amendments, the result would most likely be very different.
17. Having regard to the nature and seriousness of the offending, the amounts of methamphetamines and cannabis involved, and the comparable sentences summarized above, I consider the appropriate starting points to be:
  - (a) 12 months’ imprisonment on count 1; and
  - (b) 3 months’ imprisonment on count 2.

### **Mitigation**

18. For the Defendant’s co-operation with police, early guilty plea and lack of any previous drug related convictions, I reduce those starting points to:
  - (a) 9 months’ imprisonment on count 1; and
  - (b) 2 months’ imprisonment on count 2, to be served concurrently with count 1.

## Suspension

19. Of the considerations discussed in *Mo'unga* [1998] Tonga LR 154 at 157, the Defendant's age, lack of relevant previous convictions and co-operation with the authorities weigh in favour of suspension. On this occasion, and most likely only this occasion, and for the sake of parity with the comparable sentences referred to above, I am prepared to accede to the Crown's submission for full suspension, on conditions. That is, I am prepared to offer the Defendant this one, and as noted, most likely only this one, opportunity for rehabilitation. For the avoidance of any doubt, and as alluded to above, had the Defendant been charged with supplying, or if the offending occurred after the current amendments to the Act, full suspension would not have been available.

## Result

20. The Defendant is convicted and sentenced to:

- (a) 9 months' imprisonment on count 1; and
- (b) 2 months' imprisonment on count 2, to be served concurrently with count 1.

21. The above terms of imprisonment are to be suspended for a period of two years and on condition that during the period of suspension, the Defendant is to:

- (a) be placed on probation;
- (b) report to the probation office within the next 48 hours;
- (c) reside where directed by his probation officer;
- (d) complete courses in drug awareness and life skills as directed by his probation officer; and
- (e) perform 50 hours of community service as directed by his probation officer.

22. The Defendant is firmly admonished that if he fails to comply with any of the above conditions, he will likely be required to serve the terms of imprisonment to which he has been sentenced.
23. Pursuant to 32(2)(b) of the *Illicit Drugs Control Act*, the drugs the subject of this proceeding are to be destroyed.

NUKU'ALOFA  
19 February 2021



A handwritten signature in blue ink, appearing to read "M. H. Whitten".

M. H. Whitten QC  
LORD CHIEF JUSTICE

