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

CR 04 of 2021

BETWEEN: R E X -Prosecution
AND: MAIKOLO VEHIKITE -Accused

SENTENCE

BEFORE : JUSTICE LANGI
Counsel : Mr. Fatai Samani for the Crown Prosecution
The Accused appeared in person
Date of Sentence: 26 February, 2021

A. THE CHARGE

1. The Accused is charged with one count of possession of a Class A drug, namely 0.04 grams of methamphetamine, contrary to section 4 (a) (iii) of the Illicit Drugs Control Act;
2. On 16 February 2021 the Accused was arraigned and pleaded guilty as charged;
3. He appears before me this morning for sentencing.

B. THE OFFENDING

4. On or about 29 June 2020, at approximately 6:40pm, Drug Enforcement Taskforce officers received reliable information that drugs were being sold at the Accused's residence at Ma'ufanga;
5. The police went to the Accused's residence to conduct a search without a warrant. When they arrived, they saw the Accused running out the front door and run across the road. Police chased him and during the chase they saw the Accused throw something away.

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6. The Accused was caught and upon searching him the Police found 1 packet containing suspected methamphetamine. The police also searched for the item he had thrown whilst running and they found a test tube covered with green material;
7. The Accused was arrested and chose to remain silent when he was interviewed by the police;
8. He has no previous convictions.

C. CROWN'S SENTENCING SUBMISSIONS

9. The Crown submits the following as aggravating factors:
 - a. The Accused was in possession of both Class A;
 - b. Possession of illicit drugs is a serious offence;
 - c. The Accused did not cooperate with the Police and tried to escape when the Police came to his house;
10. The Crown submit the following as mitigating factors in support of a reduction of sentence:
 - a. The Accused's guilty plea;
 - b. No previous convictions;
 - c. Minimal number of illicit drugs found;
11. The Crown also submits the following comparable cases to assist me in determining the appropriate sentence:
 - a. *R v Vilimoa Afu* CR 177/2020 – the accused pleaded guilty to possession of 0.11 grams of methamphetamine. He was a first-time offender and had cooperated with the police. The Crown had recommended a non-custodial sentence but this was not accepted by LCJ Whitten who was of the view that the imposition of a good behaviour bond under section 198 of the Criminal Offences Act is where the offence is of a trivial nature and possession of methamphetamine will rarely ever be regarded as a trivial offence. His Honour emphasized the views of the Court of Appeal in *Maile* where it was stated that in prescribing a maximum penalty of 30 years imprisonment, the legislature has expressed a clear intention that significant penalties are to be imposed, therefore those involved with methamphetamine in any capacity, and even small amounts, can expect to receive a custodial sentence.
 - b. *R v Lemeki Pasina* (Unreported, Supreme Court, CR 274 of 2019, 12 November 2020, Niu J) – The Accused pleaded guilty to possession of 0.07 grams of methamphetamine. He was a first-time offender. He was sentenced to 6 months imprisonment, fully suspended for a period of 2 years on conditions not to re-offend, complete drug and alcohol courses and undertake 40 hours of community service.

- c. *R v Sione Senituli Lave* (Unreported, Supreme Court, CR 185 of 2020, 8 October 2020, Langi AJ)– The Accused pleaded guilty to possession of 0.11 grams of methamphetamine. He was a first-time offender. This court set a starting point of 12 months imprisonment which was reduced to 6 months in light of the mitigating factors. The sentenced was fully suspended on conditions not to reoffend, complete drug and alcohol courses and undertake 40 hours of community service.
12. The Crown submits that a custodial sentence is appropriate and recommends a starting point of 12 months imprisonment. They further submit that the starting point is reduced by 6 months in light of the mitigating factors leaving a total of 6 months imprisonment.
13. The Crown further submit that in light of the principles relating to suspension outlined in *Mo’unga v Rext* [1998] Tonga LR 154, the mitigating factors in this case warrant a fully suspended sentence. The Accused is a first-time offender, pleaded guilty at the first available opportunity and is a good candidate for rehabilitation.
14. The Crown submits that the sentence is fully suspended on the same conditions in *Lave* above.

D. PRE-SENTENCE REPORT

15. The Accused resides at Ma’ufanga. He was adopted by his mother’s sister and she raised him on her own. She later left and is now living in New Zealand while the Accused remains at their house at Ma’ufanga.
16. The Accused married Christie Vehikite and they have 3 children aged 7, 5 and 3. He is now separated from his wife he left him due to his drug addiction. He had assaulted her and she left to Vava’u with their children. His wife is now in Australia as a Seasonal worker and his children are being taken cared of by her sister in Vava’u.
17. The Accused is a member of the Seventh Day Adventist Church at Ma’ufanga but he is not an active member and has no real connection with activities in his community.
18. The Accused is employed as a cargo inspections officer with the Tau’ataina Custom Broker owned by Semisi Tau’ataina. He has been working with the company for five years and earns a weekly income of \$200.
19. The Accused admitted to the charge and to his illegal actions. He told the probation officer that he is a user of illicit drugs and he has been a user for several years.
20. He also admitted to having previous convictions for being drunk in public but no convictions for any drug related offences.

21. The probation officer is of the opinion that the Accused is remorseful and genuinely wishes to reform. However, this is difficult for him due to the pressures from his friends who are also drug users. He requires professional assistance to deal with his addiction.

E. DISCUSSION

22. As has repeatedly been stated in our courts, the rapid rise of methamphetamine in Tonga is very concerning. In *R v Ngaue* [2018] TOSC 38; Criminal Case 6 of 2018 (2 August 2018), Cato J stated that:

“methamphetamine is a scourge and has affected a great deal of harm and misery on society in countries such as Australia and New Zealand where it has become prevalent in the last couple of decades. It is highly addictive for users, is mind altering and is often accompanied by acts of serious violence as well as being causative of a good deal of collateral crime such as theft and burglary in order for the user to fund the acquisition of the drug. Significant markets are to be found for those who chose to manufacture or import the drug and large profits can be made by criminals who choose to engage in such activity. The courts have responded by imposing very significant penalties on those who engage in this kind of activity”

23. The comments by Cato J in *Ngaue* were endorsed by the Court of Appeal in *Maile* (above) when it stated that:

“Although Mr. Maile was found in possession of only a small quantity of methamphetamine his offending was serious as this is a Class A drug. In prescribing a maximum penalty of 30 years imprisonment for possession of methamphetamine the Legislature has expressed a clear intention that significant penalties are to be imposed. The distribution and use of methamphetamine in Tonga is a significant Government and community concern...”

24. I agree with the submission by the Crown on the appropriate sentence to be imposed in this case. In previous sentences for possession of methamphetamine under 1 gram I have set the starting point at 12 months imprisonment even for very minimal amounts (*R v Tafuna* CR 198/20, *R v Angilau* CR 103/20, *R v Suasau* CR 120/20, *R v Lave* CR 185/20). This is to reflect the views of the courts towards this destructive and dangerous drug and to emphasize the views stated by the Court of Appeal in *Maile* and Cato J in *Ngaue*.

25. I therefore set a starting point of 12 months imprisonment in this case for possession of 0.07 grams of methamphetamine.

26. I deduct 6 months from the starting point in light of the mitigating factors of an early guilty plea, no previous drug related offences and the possibility of rehabilitation is good.

27. Turning to the question of whether I should suspend any part of the sentence, I have considered the principles in *Mo'unga v R* [1998] Tonga LR 154 in relation to suspensions and I

agree with the views of the Crown that a fully suspended sentence is warranted in this case. There is still an opportunity for the Accused to rehabilitate and change. Rather than send him to prison now, I believe that he should be given a chance to fix his addiction and become a law-abiding citizen of this country. However, the Accused should understand that if he breaches the conditions of his suspension, he will be required to serve time at Hu'atolitoi. A suspended sentence does not mean that an Accused person is set free as is the misconception by most Accused persons and the public. A suspended sentence means that the court believes that an individual should be given an opportunity to change his unlawful ways and if he does not then he will serve the sentence passed.

F. SENTENCE

28. On the count of possession of a Class A drug the accused is convicted and sentenced to 6 months' imprisonment;
29. The sentence is fully suspended for 12 months on the following conditions:
- a. Not to commit any further offences punishable by imprisonment during the period of suspension;
 - b. Placed on probation;
 - c. Undertake and complete drugs and alcohol awareness program as directed by the Probation Office;
 - d. Complete 40 hours of community service.
30. As requested by the Crown, I further order that all illicit drugs seized from the Accused be destroyed.

NUKU'ALOFA: 26 February 2021

