

**REX**

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**SAMIU FIFITA**

**BEFORE HON. JUSTICE NIU**

**Counsel** : **Ms. L. Fakatou for the Crown.  
Mr. S. Tu'utafaiva for the accused.**

**Probation Report:** **by Mrs. 'E. To'ia on 14 December 2020.**

**Plea** : **guilty, on 18 January 2021.**

**Probation Report:** **by Mrs. 'Ilaisaane Fifita on 12 February  
2021.**

**Submissions** : **by the Crown on 22 February 2021.**  
: **by the accused on 1 March 2021.**

**Sentencing** : **15 March 2021.**

**SENTENCING**

**Offence**

[1] Samiu Fifita, you have pleaded guilty to the charge that on or about 23 June 2020, at Sia'atoutai, you knowingly possessed without lawful excuse, 0.16 gram of methamphetamine, contrary to S.4 (a) (iii) of the Illicit Drugs Control Act.

- [2] Methamphetamine is a class A drug under that Act and at the time of your offence the Act provided that the sentence for possession of a class A drug was a fine not exceeding \$1,000,000 or imprisonment up to 30 years or both.
- [3] On 8 December 2020, that law was amended so that the sentence for possessing a class A drug is now as follows:
- (a) for a class A drug less than 1 gram in weight, the sentence is a fine not exceeding \$10,000 or imprisonment not exceeding 3 years or both, and
  - (b) for a class A drug of 1 gram or more, the sentence is a fine not exceeding \$10,000,000 or imprisonment not exceeding life or both.
- [4] The amendment also provided and it is now the law that in respect of class A drug weighing 0.25 gram or more, it shall be deemed that the person possessed it for the purpose of supplying. That does not apply in your case because the amendment was made after you had already committed this offence. Besides, the amount you had was only 0.16 gram.

### **Summary of facts**

- [5] I understand that when the indictment under which you were charged with this offence was served upon you, you were also served with a copy of a summary of the evidence which the police had that proved that you committed this offence. That summary of facts would have summarised what the witnesses had already stated on their written statements, and you were provided with copies of those statements at the Magistrate's Court, before the Magistrate committed your case to this Court.
- [6] According to the summary of facts, the police received information that you were supplying or selling drugs at Kahoua from a red truck you were using. The police drove to Kahoua in 2 vehicles, travelling via Sia'atoutai. At Sia'atoutai, they met you driving the red truck and they stopped you.

- [7] They had a trained dog and the dog sniffed something inside the storage compartment of your van. When they opened it, they found \$760.20 in cash inside. You told the police that your wife had given you that money to buy pig feed for your piggery.
- [8] The dog also sniffed something in a small child's shoe by the handbrake. The police found \$2.00 and 1 pack of methamphetamine in it. You told the police you did not know whose pack it was but that the little shoe was your son's.
- [9] The police also found 2 scales under the driver's seat and you told the police that you used the scales for weighing the pig feed.
- [10] The methamphetamine was weighed and was found to be 0.16 gram and it was analysed and was confirmed to be methamphetamine.

### **Probation report**

- [11] The probation officer says that you are 39 years old and that you were born in the U.S and you grew up there except for a few years in which you were at school here in Liahona High School. You married your wife in 2008 in the US and you both came to Tonga with your parents in 2018 because your parents wanted to rebuild the family home. Since being here, you have fostered 2 young children as your own because you both have not been able to have your own children.
- [12] Your parents went to the US for medical reasons and they have not returned because of the present border lock down.
- [13] You say that you do not have a steady job and that you do odd jobs like concreting and fencing and that you are raising pigs which you hope to sell. Your wife runs a fair sometimes when the items are shipped down from the family overseas. You say you also receive monies sent by the family overseas.
- [14] You told the probation officer that you did not know about the drug being put in the vehicle by one of the workers you would take to work in the tax allotment. You told her that you pleaded guilty

because you were the one driving the vehicle when the drug was found in it.

[15] The probation officer says that there are mitigating factors in your favour, namely:

- (a) You have pleaded guilty.
- (b) you have been remorseful for the offence.
- (c) you have asked for a chance to continue to develop the piggery business you have started, and
- (d) you have no criminal record.

[16] She says that no one at your Church (LDS) knows of you because you do not go to Church and that the town officer of Hofoa does not know anything about you either.

**Crown submissions**

[17] Ms. Aonima for the Crown refers to the sentences imposed in 5 cases of methamphetamine similar to your case and I set them out as follows:

	Name	No.	Weight	Plea	Record	Impr.	Suspend	Course	Community	Forfeit
a	Maile	AC23/18	0.52gm	guilty	nil	9mths	9mths	Yes	50hrs	nil
b	Fakava	CR137/19	0.18gm	guilty	nil	12 mths good behavior	-	Yes	-	-
c	Havea	CR178/19	0.11gm	guilty	nil	12mths	12mths	No	-	-
d	Tengange	CR231/19	0.38gm	guilty	-	6mths	6mths	No	-	-
e	Tonga'ofa	CR122/20	0.11gm	guilty	yes	12mths good behavior	-	Yes	-	-
f	Afu	CR177/20	0.11gm	guilty	nil	6mths	6mths	yes	-	-

[18] She says that in considering and comparing your case to those cases, she recommends that a starting point of 12 months be set and

that another 6 months be added to make a term of 18 months because you were supplying the drug to others, but that deductions be made therefrom for your guilty plea and for your previous good record, the lengths of which she left for me to decide. She makes no mention of any suspension to made or to be considered.

### **Supplying?**

- [19] First, I have to consider whether or not you were supplying the methamphetamine to others because that is a serious matter from the simple matter of possession. If you were in possession of the meth for your own consumption, it is not as bad as possession of it for supply to others because in one you are the user, the addict and the victim and in the other you are the enslaver. You sell the drug to the slave for so much money because the slave must have the drug and he will find the money to pay you because he is a slave of the drug. You, the supplier knows it and so you continue to supply the slave to keep him enslaved and at the same time make more and more money for yourself. Such is the vast difference between the one and the other,
- [20] The Illicit Drug Control Act provides for 5 different and separate offences in respect any illicit drug:
- (a) possessing the drug;
  - (b) manufacturing the drug;
  - (c) cultivating the drug;
  - (d) using the drug; and
  - (e) supplying the drug.
- [21] Obviously, the manufacturer and cultivator of an illicit drug would be viewed most seriously because they are the perpetrators who make the drugs in the first place and obviously they make the most money out of it. That is why the Act sets a fine of up to \$1,000,000, and an imprisonment sentence of up to life imprisonment or both. The

distributors or suppliers are the next in line. They share in the money collected from the sale of the drugs to the users and addicts.

[22] So it is a very serious allegation against you to say that you had in your possession this methamphetamine of 0.16 gm for the purpose of supply to the users. And Ms. Aonima says that that was what you were doing, that you were selling the meths to persons in the Kahoua area. The police had received information that you were doing that and so 2 police vehicles were dispatched to that area, but you had left and you met those 2 vehicles at Sia'atoutai, where they stopped and searched your vehicle and found the one pack of meth 0.16 gm in weight and \$760.20 in cash in the van compartment.

[23] I do not know about you, or anyone else for that matter, but if my wife gave me such a lot of money as \$760.20 to buy pig feed for the piggery, I would be sure to put that money safely in the pocket of my trousers and I would certainly not have put it in the vehicle compartment.

[24] However, you were not, and you are not, charged with supplying of illicit drug. You were charged with, and you only pleaded guilty to possessing this 1 pack of 0.16 gm of methamphetamine. And I cannot, and I should not even begin to, consider that you had that pack for supply or sale to others, because you are not guilty of such an offence.

[25] I therefore do not agree that another 6 months be added to the 12 months imprisonment which the Crown has recommended as the sentence for you.

[26] On the other hand, I consider that 3 months be deducted for your guilty plea thereby leaving an imprisonment sentence of 9 months which I consider is appropriate.

### **Suspension**

[27] As to suspending that sentence I consider that because you have had no criminal conviction for all your 39 years of age, you would make use of a full suspension of your sentence and not re-offend for as

long as the law allows you, that is, 3 years. And I urge you to take this opportunity seriously, and thankfully, because if you commit another offence punishable by imprisonment within those 3 years, you will have to serve the suspended 9 months in addition to a much longer sentence of that subsequent offence.

### **Community and course**

[28] I also consider that you should attend and complete the drug and alcohol awareness course of the Salvation Army and to serve 50 hours of community service.

### **Find a job**

[29] Finally, I urge you to find a job. You have a wife, and you have 2 children to feed and clothe and educate. You will not be able to do that with the income from the piggery or with money remitted from your family overseas or from the occasional sales of items at your wife's fair. Find a job and make an honest living for yourself and your family.

### **Sentence**

[30] Accordingly, I sentence you as follows:

- (a) For the offence of possessing 0.16 gm methamphetamine you are sentenced to 9 months imprisonment but that sentence is fully suspended for 3 years from today upon condition that you do not commit an offence punishable by imprisonment within the period of suspension.
- (b) You must attend and complete the Salvation Army course on drug and alcohol awareness as the Probation Officer shall arrange for you.
- (c) You must serve 50 hours of community work which the Probation Officer shall arrange for you.
- (d) You must report to the Probation Officer with a copy of this sentencing immediately after you leave this Court this morning to make the necessary arrangements for the work and course I have ordered.

- (e) The police shall forthwith with destroy the 0.16 of methamphetamine in respect of this offence.
- (f) The police may make application for forfeiture of the \$760.20 under the Proceeds of Crimes Act. If they do not wish to apply, they shall return that money to you, the accused.



A handwritten signature in black ink, appearing to be "Niu J", is written over the seal and extends to the right.

Niu J  
**J U D G E.**

**NUKU'ALOFA: 1 March 2021.**