

Sam + He.

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

CR 1 of 2021

REX

-V-

SEMISI FAKAVA

BEFORE HON. JUSTICE NIU

**Counsel : Mr. F. Samani for the Crown.
Mr. S. Fakava, accused, Ha'asini.**

Plea : Guilty on 22 February 2021.

Probation Report : filed on 26 March 2021 by Kelela Fetu'u.

Crown submissions : filed on 29 March 2021

Accused submissions : 31 March 2021

Sentencing : 16 April 2021.

SENTENCING

Offence

[1] Semisi Fakava, you knowingly and without lawful excuse possessed 0.81 gm of methamphetamine on 17 February 2019 at Nuku'alofa which is an offence under the Illicit Drugs Control Act. You were charged with that offence and you pleaded guilty to it.

[2] You now appear before me for sentence for that offence.

Facts

[3] What happened was that the police received information that you had illicit drug on you and that you were driving around in a certain vehicle.

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16 APR 2021
[Signature]

The police looked for that vehicle and found it in Kolofo'ou with you and two girls in it. They took you, the 2 girls and the vehicle to the police station and they found syringe, a test tube and 2 packs of methamphetamine beside your seat, the driver's seat. The meth weighed 0.81 gm.

Previous convictions

- [4] You have previous convictions. You were convicted in the Magistrates Court on case no.180/2019 for possession of illicit drug. It does not say what the illicit drug was but I would assume it was cannabis because you were only fined \$500 or serve 2 months imprisonment in default.
- [5] You were also convicted in the Supreme Court twice. First, was case no. 137/2019. It was for possession of illicit drug again, and again it does not say what the drug was, and may be it was for cannabis again because you were then ordered to be on a good behavior bond for 15 months and to be placed on probation for that period on conditions that –
- (a) you do not commit any offence;
 - (b) you do not consume alcohol or drug; and that
 - (c) you take the Salvation Army course on drug rehabilitation.
- [6] The second case was no.170/2020 and it was for forgery, dealing with a forged document and for obtaining money by false pretence, and you were ordered to be on a good behavior bond for 15 months and to be on probation for that period on conditions that –
- (a) you live where directed, and
 - (b) you take the Salvation Army course on drug rehabilitation.
- [7] It would appear that those convictions were subsequent to the offence which you have committed in the present case, on 17 February 2019. I do not know, and Mr. Samani, counsel for the Crown, does not explain why this present case was not dealt with by the Supreme Court when it dealt with those above stated cases, because it should have.

[8] But Mr. Samani says that you have not committed any other criminal offence since the Supreme Court dealt with those two matters.

Probation Report

[9] Ms. Kelela Fetu'u, the probation officer, says that you told her that when you committed this offence (February 2019), you were a user and that that was why you had the drug with you then, but that after you were caught you have stopped using it and that you have been able to stop completely and that you have been drug free from then up to now.

[10] She says that that was due to a determined effort by you to change your life and that you did attend Sia'atoutai Theological College in 2020, and that you would like to continue to do that this year. She says that you wanted to carry on with it this year but you did not want to commence this year until you know what will happen to you with your present case. She says that she spoke with the tutor at the College and that he told her that you were quite capable of completing your study course, and that he was hoping that you would return to complete it.

[11] She says that you ought to be given a chance to complete that course so that you would thereby lead a more worthwhile life. She recommends that you be given a fully suspended sentence but subject to conditions.

Crown submissions

[12] Mr. Samani properly refers to the cases of ***R v Katoa*** (CR179/20) and ***R v Sakopo and Havea*** (CR176 & 178/19) and recommended that the starting point for you be 2 years imprisonment but that 9 months be deducted for your guilty plea and cooperation and for your remorse, and that the final sentence of 1 year 3 months be fully suspended on condition that you resume and complete your studies at Sia'atoutai.

Your submissions

[13] In your oral submissions, which you made to me in person in Court, you told me that you have completely changed and that you have finally seen the errors of your previous way of life, in disobeying your parent's advice

and teachings. You promised to me that you would not reoffend and that you would not appear in Court again.

- [14] When you told me that, I was not sure whether to believe you. I therefore questioned you as to when you first took drugs and you told me that you started smoking cannabis when you were 15 years old whilst you were a student at Tonga High School, and as a result your father took you from there to Tonga College where he had been to school himself, in order that you be better disciplined there.
- [15] You completed form 6 there and you attended USP in 2004 and studied a computer course there and at the same time you worked at a workshop where you re-programmed computers. Then an Australian company took you to Australia on a 6 month course to learn and work in repairing photocopiers. You completed that and returned to Tonga in 2005 and worked for Pac Trade in servicing their copiers and computers. At the same time, you were playing rugby for the Toa-Ko-Ma'afu rugby team.
- [16] You were selected and you were taken by a New Zealand rugby club on a 1 year contract to play for them, and after that 1 year, it was renewed for another 2 years. At the same time you lived with a New Zealand partner and you had a child with her. She applied and you got permanent residence in New Zealand. That was 2008.
- [17] But then you had a problem with drinking (as well as problems with other girls) and you were caught drunk driving in a car that belonged to another person. That car was impounded as a result. You then gave your own car to that person. Your partner did not like that and she left you taking the child with her, and she had your permanent residence in New Zealand cancelled and you were returned to Tonga in 2011. That was after you had 2 other children to 2 other women in New Zealand as well.
- [18] You continued working in Tonga in copier servicing and also still playing rugby. In 2015 you got married and you applied for and you got your permanent residence again in New Zealand and you and your wife and your child with her went to New Zealand. But then problems arose because your previous partner and the other 2 women who had children

to you all sued you for maintenance. Your wife who had not known about those women and your children with them, also left you and took the child with her. She also claimed maintenance from you.

[19] You said that you decided to leave New Zealand and you returned to Tonga. I asked you when it was that you came back to Tonga then, but you said that you could not remember at all, and I have to say that you do not seem to recall the years very well at all when I asked you about when you did what. You told me that you could not remember because your mind was wandering (“he”).

[20] You told me that you brought back with you NZ\$3,000 then and that you decided to buy and sell drugs to raise money to get all your 4 children returned to you here in Tonga. You then bought cannabis and sold them at a profit and carried on but sooner than later, you found that you were not making any money as you had thought you would, because you were also using the drug yourself as user. You lost all that NZ3,000 and you ended up committing the crime of forgery for which you have been convicted.

[21] You told me that after you were caught, you then returned to your parents and that they took you back and that you now work with them planting crops in the tax allotment.

[22] You said that you took the Sia’atoutai Course from February 2020 to November 2020, and that you were to continue it in February this year, in order that you are sure to remain drug free.

[23] You told me that you have maintained that abstinence up to now.

Consideration

[24] Now, having listened to you and to your answers to my questions, I believe you have been frank with me and I have to give you credit for having answered my question truthfully, to the best of your recollection.

[25] Because the amount of methamphetamine that you had, 0.81 gm, was a lot (for use by one person) I consider that the appropriate sentence for you is imprisonment rather than probation of good behavior because

methamphetamine is a much more dangerous drug. The law provides for a heavier sentence for methamphetamine.

[26] I agree with Mr. Samani that taking the mitigating factors in your case into account, a sentence of imprisonment 1 year 3 months is appropriate.

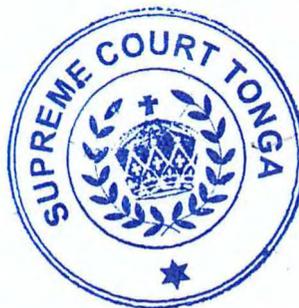
[27] I also agree with him that that sentence be fully suspended but I would suspend it for as long as the law provides, namely 3 years, so that you will be sure to keep yourself free of any drug, and be sure not to commit any other offence, for those 3 years. You would, or should, be sure by then to be fully rehabilitated. If you breach that suspension, you will serve the suspended sentence as well as the sentence for the subsequent offence.

[28] I do not consider that it is necessary that you comply with or carry out any other condition of your suspension.

Sentence

[29] Accordingly, I sentence you to 1 year 3 months imprisonment for your offence of possession of 0.81 gm of methamphetamine on 17 February 2019 of which you have been charged, and to which you have pleaded guilty in this case, but that sentence is fully suspended for a period of 3 years from today, which suspension is subject to the condition that you do not commit an offence punishable by imprisonment during the 3 year period of your suspension.

NUKU'ALOFA: 16 April 2021.



A handwritten signature in blue ink, appearing to be "Niu J", is written over the seal.

Niu J

J U D G E