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

CR 25 of 2021

REX

-v-

ANGILAU PALANITE

BEFORE HON. JUSTICE NIU

Counsel : **Mrs. S. 'Eliesa for the Crown.
Mr. S. Taione for the accused.**

Plea : **Guilty, on 15 March 2021.**

Report : **Probation Officer, Patelesio Pale,
12 April 2021.**

Submissions : **by Crown on 20 April 2021.
by Mr. Taione on 5 May 2021.**

Sentencing : **10 May 2021.**

SENTENCING

Offence

- [1] Angilau Palanite, you have pleaded guilty to possession of 0.12 gm of methamphetamine at Puke on 14 September 2020 which is an offence under S.4 (a) (iii) of the Illicit Drugs Control Act.
- [2] According to a summary of facts provided by the Crown, the police received information that you were driving around in your vehicle selling drugs. They acted straight away and stopped your vehicle and you were the only one in it. They searched you and found 1 pack of meth in your

slippers, and they searched your car and found \$1,300 cash inside a bag between the front seats and \$20 in a compartment next to the steering wheel.

[3] The methamphetamine was tested and confirmed and was weighed and was found to be 0.12 gm.

[4] Although you remained silent when questioned by the police, you have pleaded guilty to having had possession of that methamphetamine without lawful excuse and you had the benefit of legal advice of your counsel.

No previous conviction

[5] The Crown has advised that you have no previous conviction and that this is your first offence.

Report

[6] The probation officer has prepared a report on your circumstances. He says that you are married and you have 2 children aged 8 and 6 and that you live in your own separate house with your family from the house of your parents on the town allotment at Malapo. He says that although your mother is still alive and is holding the allotment as widow of your father, you are the eldest son and heir to that allotment.

[7] You told him that your father had started and was operating a bus service and that you helped him run that business and you added rental vehicles and take away food business to it and you and your father jointly operated it. Unfortunately, your father died in 2017 and you were not strong enough to run the businesses alone. You allowed your wife to try to control the business and your mother did not agree to that and so the business went down. You told him that you then took to drink and drug, which has led you to this Court today.

[8] You told him that the hopelessness of the life you were leading in drugs, did not hit home to you until you were arrested and charged with the present offence in September last year. Having then been faced with the reality of going to prison for what you were doing, you told the probation officer that you then sought your wife's and your mother's forgiveness for

having let them down and they were in agreement that you restart and to continue the business again, so that you would never go back and use drugs again. You told him that you have all been happily reconciled and that you are now back in business.

- [9] He said that it is only the take away food business which is being restarted, but he is hopeful that you are going to make it.
- [10] He does not make any recommendation at all about your sentence but he says that it would assist greatly if you were ordered to undertake and complete the drug awareness course of the Salvation Army.

Crown submissions

- [11] The Crown has referred to 3 cases which are comparable to your case:
- (a) **R v Fifita** (CR232/20) where the accused, who had no previous conviction, pleaded guilty to possession of 0.16 gm of methamphetamine. He was sentenced to 9 months imprisonment but which was fully suspended for 3 years on condition he performed 50 hours community service and to complete the drug and alcohol awareness course of the Salvation Army.
 - (b) **R v Afu** (CR177/20) where the accused, who also did not have a previous conviction, pleaded guilty to possession of 0.11 gm of methamphetamine. He was sentenced to 6 months imprisonment but fully suspended for 12 months and to undertake the drug awareness course.
 - (c) **R v Lave** (CR185/2020) where the accused who had no previous conviction pleaded guilty to possession of 0.11 gm of methamphetamine. He was sentenced to 6 months imprisonment but fully suspended for 12 months on condition he served 40 hours community service and to complete the drug and alcohol awareness courses and the life skills course of the Salvation Army.
- [12] In confirming that you have no previous conviction and because you have pleaded guilty, the Crown recommends that you be given 6 months imprisonment but to be fully suspended on condition that you serve a community service and to take the drug awareness course.

- [13] It also recommends and requests that
- (a) the methamphetamine found be destroyed, and
 - (b) that the \$1,320 found during the search be forfeited to the Crown.

Your counsel's submissions

- [14] Your counsel, Mr. Taione, says that he knows you and your family well because he says he grew up in Malapo, and that he was even involved in some court proceeding between your wife and your sister due to the squabbling that took place after your father died.

He is therefore able to confirm, and I accept his words for it, that you have really decided to change and that you have changed from the foolish life which you had led since your father died.

- [15] He says that he agrees with the recommendation of the Crown as to the suspension of your sentence and to your taking the Salvation Army courses. He however does not say anything about the Crown's request for the forfeiture of the \$1,320.

Consideration

- [16] I am reasonably satisfied that the sentence of 6 months imprisonment recommended by the Crown is the appropriate sentence for your offence in light of the sentences imposed in the cases referred to by the Crown, and I am also satisfied that that sentence be fully suspended as was done in those cases.

- [17] As to the conditions to be imposed on that suspension, I agree with the suggestion of the probation officer, and which is supported by the Crown, that you attend and to complete the drug awareness course of the Salvation Army.

- [18] By attending that course you will be taught and be guided by experienced and trained teachers. They will be able to watch your progress in order that you are able to resume a normal life without drug.

- [19] I also agree with the recommendation of the Crown that you serve a community service. It is a service that you give to the community as

compensation for the offence you have committed when you breached the law which governed the community. Illicit drugs are a big problem and are a serious concern to the community. It is only right that you show your contrition and your promise not to breach that law again by carrying out that public service to the community itself.

[20] If you perform those services and if you attend and complete the awareness course as well, your imprisonment sentence will be extinguished at the end of the period of suspension, unless, during that period of suspension, you commit an offence punishable by imprisonment. If you commit such an offence before the end of the suspension, you will then serve your suspended sentence of imprisonment, in addition to any sentence for that other offence.

[21] The period of suspension is therefore important. The shorter it is, the quicker it is for your sentence to be extinguished. And that is my concern about short periods of suspension. It means that you would only be law abiding for that short period of suspension in order that your suspended sentence is extinguished, and you are then free to commit another offence without fear of having to serve the suspended sentence. I consider that the longer that period of suspension is, the longer it is that you are law abiding and it is the better for you, let alone the community itself. The length of the suspension should be such that by the end of the suspension, living a law abiding life has become part of your way of life. You would then not reoffend because you have become a different person from what you had been, and not because you want to cancel your suspended sentence.

[22] It is to everyone's benefit, especially yours that the suspension is for a longer period.

Other orders

[23] As to destruction of the methamphetamine as requested by the Crown, I agree that that should be so.

[24] As to forfeiture of the cash of \$1,320 which was found in your vehicle at the time you committed this offence, as the Crown has requested, I have

to consider the provisions of S.33 (3) of the Illicit Drugs Control Act: It provides:

“(3) If, on the conviction of any person for an offence under this Act and the Court is satisfied, on a balance of probability, that money found in the possession of that person was received by that person in the course of or consequent upon the commission of that offence, or was in the possession of that person for the purpose of facilitating the commission of an offence against this Act, or is evidence in relation to commission of an offence, the Court shall, in addition to any other penalty imposed pursuant to this Act, order that that money be forfeited to the Crown.”

[25] According to the summary of facts to which I have referred, the police received information that you were driving around in your vehicle selling drugs, and they acted straight away and stopped your vehicle and found you had only 1 pack of meth left and that you had \$1,320 in cash in your possession.

That to me, proves, upon a balance of probability, that you did in fact travel around in your vehicle selling drugs as the police were informed, and that the \$1,320 was the cash you received from selling the drugs.

[26] I am therefore satisfied that the money (\$1,320) found in your possession “is evidence in relation to commission of an offence”, as provided in the said subsection (3) of S.33. The offence that was committed was the sale of illicit drug, which is an offence under S.4 (1) (b) of the Act, and this money was received from the sale of the drug, and it is therefore evidence of commission of that offence of sale of illicit drug, although you were not charged with that offence.

[27] Although this offence was committed in September 2020, and this provision of S.33 was only enacted and came into force (Upon the Royal Assent) on 8 December 2020, it is not retrospective because your conviction for this offence only occurred after your guilty plea which you gave on 15 March 2021.

[28] Neither is it retrospective in respect of clause 20 of the Constitution because that clause only protects rights or privileges existing at the time of the enactment of the subsection on 8 December 2020. You had no right or privilege at all to have possession of that \$1,320 because it was unlawful proceeds of a crime of sale of illicit drug, which was already a criminal offence on the date you were selling the drugs under S.4 (1) (b).

[29] I am therefore satisfied that the \$1,320 be forfeited in accordance with that law.

Orders

[30] Accordingly, I make the following orders:

- (a) For your offence of possessing 0.12 gm of methamphetamine on 14 September 2020 at Puke, in breach of S.4 (1) (b) of the Illicit Drugs Control Act, you are sentenced to 6 months imprisonment, but that sentence is suspended for a period of 2 years from today upon the condition:
 - (i) that you serve 40 hours community service as directed by the probation officer,
 - (ii) that you attend and complete the drug awareness course of the Salvation Army, and
 - (iii) that you do not commit another offence punishable by imprisonment within the period of suspension.
- (b) The methamphetamine in respect of which you have been convicted and sentenced shall be destroyed by the police forthwith.
- (c) The sum of \$1,320 which was found in your possession at the time of your offence is forfeited to the Crown forthwith.

NUKU'ALOFA: 10 May 2021.



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

Niu J
J U D G E