

Sean + file

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

CR 90 of 2020

R E X

-v-

Epuefi LAIMANI

SENTENCING REMARKS

BEFORE: THE HONOURABLE COOPER J
Counsel: Mr. Samani for the Prosecution
Mrs. Mailangi for the Accused
Date of sentence: 3rd May 2021

The charges

1. Count 1, possession of 5.15 g Methamphetamine contrary to section 4 (a) (iii) Illicit Drugs Control Act.
2. Count 2, possession of 3.59 g Cannabis contrary to section 4 (a) (i) Illicit Drugs Control Act.
3. Count 3, Offering to Bribe a member of Tonga Police, contrary to section 16 (1) Tonga police Act offering to bribe officer Fifita – relating to alleged offer to bribe him \$50.
4. Count 4, Offering to Bribe a member of Tonga Police, contrary to section 16 (1) Tonga police Act offering to bribe officer Fifita \$3000.

The offending

5. Detective Fifita gave the following evidence.

6. At approximately 2 p.m., on 10 October 2018, he was in plain clothes, being driven East along Vuna Road in an unmarked Police car. He was sitting in the rear passenger side seat. Officer Pohiva was driving. Officer O'otuhuoma was in the front passenger side seat.
7. They passed a vehicle parked opposite the Tanoa Hotel. He recognised the defendant seated in the vehicle. He knew the defendant from a previous drugs search conducted that year; 2018.
8. As they drove past, the Defendant ducked down out of sight. Detective Fifita was suspicious. He therefore asked Officer Pohiva to turn their car around. The police vehicle then drove in behind the Defendant's car to block him in.
9. Detective Fifita then got out and went to the driver's side door of the Defendant's vehicle. The Defendant was the sole occupant. When asked what he was doing, the Defendant said: "*Officer Fifita, I am just catching the air.*" The Defendant then produced a \$50 note and handed it to Detective Fifita who responded: "*I cannot take the money.*" The Defendant's hands then started to tremble.
10. Detective Fifita then told the Defendant to step out of the vehicle. Instead, the Defendant reached under the steering wheel to a compartment from which he produced an amount of cash including \$100 and \$50 notes. He grabbed the officer's hand and tried to push the notes into it, whilst saying "*Please bro, please bro*". Detective Fifita replied: "*You know I am a police officer; I will not take the money*".
11. The defendant then reached into his right pants pocket, took out a can and threw it towards his feet inside the car. Detective Fifita opened the car door and seized the can. Officer Pohiva joined him at the side of the car and assisted in taking the defendant out of the vehicle. Detective Fifita then asked the defendant what was in the can. The defendant said that he did not know to whom the can belonged.
12. The officers then opened it in the defendant's presence and found packets of what appeared to be cannabis and methamphetamines inside. Mr Laimani said that they "*belonged to a group of friends who had used the car the night before*".
13. Detective Fifita then told him that he would be taken to Nuku'alofa police station and charged with possession of illicit drugs. On two occasions en route, the Defendant asked the officers to stop at a BSP ATM so that he could give them \$3,000 each. He was taken straight to the police station.

14. When they arrived at the Police station, the senior officer, Tapueluelu, was informed of the arrest and shown the can containing the suspected drugs from the car. A total of \$390 in cash was also recovered from the Defendant's car.¹
15. There were 14 packets of methamphetamine and 8 packets of cannabis.
16. Mr Laimani contested the allegations and was convicted after trial on overwhelming evidence.

Previous convictions

#	OFFENCE	COURT	COURT CASE	SENTENCE
1.	Housebreaking: Theft:	Supreme Court	347/2003	1 year imprisonment suspended for 3 years.
2.	Wilful damage to property.	Supreme Court	29/2003	\$800 compensation or 3 months
3.	Having possession of reasonably suspected stolen property.	Magistrate Court	293/2013	\$200 fine or 1 week imprisonment for non-payment.
4.	Possession of illicit drugs (Class A)	Supreme Court	59/2019	2 years and 9 months imprisonment.

Aggravating and mitigating factors

17. The prosecution make the following submissions :
18. The Crown submits that the aggravating features applicable in this case are as follows:

AGGRAVATING FEATURES

- (a) The Accused showed no remorse;
- (b) Drug offences are a serious issue here in the country;
- (c) The Accused was in possession of a substantial amount of both Class A;
- (d) The Accused has a previous conviction for possession of illicit drugs in CR 59/2019;
- (e) The Accused committed these offences whilst he was on bail in the

¹ 1 x \$100; 4 x \$50, 4 x \$20 and \$10.

Magistrates Court for CR 59/2019;

(f) The bribery of a member of the Tonga Police is a serious offence which threatens the foundation of society,

19. The Crown submits that there are no relevant mitigating features in this case.

Comparable Sentences

20. The Crown submits the following cases in order to assist the Court in determining an appropriate sentence for the Accused.

(1) *Rex v Nausaimone Kitekei'aho* CR 36/2015

- a. The Police executed a search warrant to the Accused's residence and found nothing incriminating until the Accused offered the officer in charge \$2,000 not to search his mother's house.
- b. The police searched the Accused's mother's house and found 3.8 kilograms of cannabis inside her bedroom. The Accused admitted to the police that the cannabis belonged to himself and that he had it hidden inside his mother's house. He was convicted following a contested trial.
- c. For the bribery charge, Justice Cato imposed a starting point of 2 and a half years. That was reduced by 6 months for mitigation. His honour then added 1 year from the 2 years for the bribery charge to the possession charge resulting in a total operative sentence of 3 years and 9 months imprisonment.
- d. Because the Accused did not express any remorse and maintained his innocence despite the overwhelming evidence against him, no part of the sentence was suspended.

(2) *Rex v Ma'ata Pouono* CR 27/2019

- a. The Accused's residence was searched without a warrant. The Police discovered 0.18 grams of methamphetamine and \$1,366 at the residence. The Accused was arrested and on their way to the Police Station she told the Police that they could keep the money seized from her residence and return her home. The Accused was convicted following a contested trial.

- b. For the bribery charge, Justice Niu referred to the case of *Kitekei'aho* and imposed the same sentence of 1 year imprisonment consecutively to a sentence of 6 months imprisonment for the possession charge. This resulted in a total operative sentence of 1 year and 6 months imprisonment.
- c. Because the Accused showed good prospects of rehabilitation, her sentence was fully suspended for 2 years on the condition that she no longer committed any offences punishable by imprisonment during the suspension period.

(3) *Rex v Piliote Uasike*, CR 161/2019

- a. The Accused pleaded guilty to two counts of possession of illicit drugs and one count of bribery of a member of Tonga Police. The Accused possessed 3.48 grams of methamphetamine, 0.87 grams of cannabis and offered to give the Police anything they wanted as an inducement to refrain from arresting him.
- b. The methamphetamine charge was the head sentence and a starting point of 3 years imprisonment was adopted, where 6 months was discounted for the Accused's guilty plea. The Accused was convicted and discharged for the cannabis charge.
- c. The Accused was sentenced to 14 months imprisonment for the bribery charge. Three months imprisonment from this charge was served cumulatively with the methamphetamine sentence. In total, the Accused was sentenced to 2 years and 9 months imprisonment with the final 12 months suspended.

(4) *Rex v Viliami Mangisi*, CR 10/2018

- a. The Accused was convicted by a Jury for possession of 1,969.14 grams of methamphetamine and for attempted export of those drugs.
- b. Justice Cato adopted *Zhang v R* [2019] NZCA 507 to assist in the Accused's sentencing. *Zhang* revised *Fatu* [2006] 2 NZLR 72 (CA). The bands in *Fatu* had been applied in Tonga as guidelines for determining appropriate sentences for drug offenders. These bands were:

Band one; less than 5 grams;	2-4.5 years	Community based - 4 years
Band two; less than 250 grams;	3-11 years	2-9 years
Band three; less than 500 grams;	8-15 years	6-12 years
Band four; less than 2 kilos;	10 years to life	8-16 years
Band five; greater than 2 kilos;	10 years to life	11 years to life

(5) *Rex v Paula Moala CR 186 and 280/2020*

a. The Accused pleaded guilty on arraignment for 2 separate matters. The first was CR 186/2020, for the possession of 7.63 grams of methamphetamine and 2.43 grams of cannabis. The second was CR 280/2020, for the possession of 25 grams of methamphetamine and the possession of an unlicensed ammunition.

b. Both matters were dealt with together. The head sentence was Count 1 in CR 280/2020 (25 grams of methamphetamine). The starting point was 5 years imprisonment. This was to be mitigated by 15 months leaving a total of 3 years and 9 months imprisonment. The final 18 months was suspended on conditions.

a. For CR 186/2020, the starting point was 3 years imprisonment. This was mitigated by 9 months. One year of that sentence was added cumulatively to the sentence in CR 280/2020. The total sentence was 4 years and 9 months imprisonment with the final 18 months suspended on conditions. The remaining 2 years and 9 months is to be served concurrent with matter in CR 280/2020.

21. I have also carefully considered the approach of the Lord Chief Justice in *R v 'Amusia He 'A Mateni 213/2020*

22. He considered *R v PMP [2020] TOSC 112* at [16], and referred to the Court of Appeal's remarks in *R v Maile [2019] TOCA 17* in which the Court endorsed the view expressed by Cato J

in *R v Ngaue*,² summarised as:

- methamphetamine is a scourge to societies everywhere that has effected a great deal of harm and misery;
- the distribution and use of methamphetamine in Tonga is a significant government and community concern;
- in prescribing a maximum penalty of 30 years imprisonment, the legislature has expressed a clear intention that significant penalties are to be imposed; and
- therefore, those involved with methamphetamine in any capacity, and even small amounts, can expect to receive custodial sentences.

23. It is significant that the recent amendments to the Act (which commenced 8 December 2020) include increasing the maximum penalty for possession, among other things, of 1 gram or more of a Class A drug, to life imprisonment (as per New Zealand) and that possession of 0.25 of a gram or more of such drugs shall be deemed to be supplying. Whilst those amendments do not apply to the instant case, they do provide a powerful indication of Parliament's intention to equip the courts with the ability to impose more severe sentences as part of the war on drugs.
24. In that case, which involved possession of 8.08 grams of methamphetamine LCJ Whitten QC concluded :
25. “Having regard to the seriousness of the offending, the substantial amount of methamphetamines seized, the comparable sentences submitted by the Crown (in particular, *Hafoka*) and the principles referred to above, I set the starting point for the methamphetamine charge at 4 years’ imprisonment.”

Instant case

26. The defendant was convicted of possession. But the evidence paints the clearest picture of someone who was dealing drugs, serving them up to customers outside the Tanoa hotel in Nuku’alofa, who would drive up to meet him parked in his car in the parking area by America Wharf.
27. Detective Fifita gave evidence that there was of a line of vehicles parked next to his, each with someone inside.
28. That the defendant had all the drugs ready to sell in dealer bags 14 methamphetamine and 8

² Unreported, Supreme Court, CV 6 of 2018, 2 August 2018 at [5] and [6].

cannabis, makes the reality of the situation undeniable.

29. He may have been in possession of the drugs but in the circumstances it is clear that it was possession with intent to supply them, and that was what he was doing.
30. It would be a significant weapon in the prosecution of these offences if there was the ability to lay that charge.
31. I have also considered all the mitigation in the pre sentence report and accompanying references.

Sentence

32. On count 1 my starting point is 3½ year. I increase this to 4½ to reflect that he was plainly involved in supplying amphetamines that day.
33. His sentence on count 2 is 1½ years concurrent.
34. On count 3 I sentence him to 1 year consecutive.
35. On count 4 1 year to run concurrent with the above sentences.
36. In the real hope that he can be rehabilitated I suspend the last 6 months for 2 years on the following conditions :
 - (a) not commit any offences punishable by imprisonment;
 - (b) be placed on probation;
 - (c) report to the probation office within 48 hours of his release; and
 - (d) satisfactorily undertake a drugs awareness course and any other rehabilitative course/s as directed by his probation officer.
37. The drugs and any paraphernalia forfeiture and destruction.
38. The money to be forfeited.
39. That gives a total sentence of 5 ½ years' imprisonment the last 6 months suspended on the terms as above.

NUKU'ALOFA
3 May 2021

