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

**CR 300 of 2020**

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**REX**

**-V-**

**TUPOU SAULALA HAUPEAKUI**

**BEFORE HON. JUSTICE NIU**

**Counsel** : **Mrs. T. Vainikolo for the Crown.  
Mr. S. Fili for the accused.**

**Plea** : **Guilty, on 23 March 2021.**

**Report** : **by Probation Officer, Patelesio Pale on 20  
April 2021.**

**Submissions** : **by Mrs. Vainikolo on 30 April 2021.**  
: **by Mr. Fili on 4 May 2021.**

**Sentencing** : **25 May 2021.**

**SENTENCING**

**Offence**

- [1] Tupou Haupeakui, you were charged with 1 count of possessing 0.46 gram of methamphetamine at Kolomotu'a on 23 July 2020 contrary to S.4 (a) (iii) of the Illicit Drugs Control Act and you pleaded guilty to that charge on 23 March 2021.
- [2] According to a summary of facts, which the Crown had provided to you before you made your guilty plea, the police received information that

you were selling illicit drugs from a motor vehicle you were using, a rental vehicle. The police straight away looked for you and they found you in that vehicle on the road at Kolomotu'a and they stopped you.

- [3] As you got out of the vehicle, a bottle fell out and you told the police that there was drug inside the bottle and there were 4 packs of meth inside the bottle. The meth inside those packs were analysed and were confirmed and were weighed and found to come to a total of 0.46 gram. You confessed to the offence and cooperated with the police.

### **Probation report**

- [4] The Probation Officer says that you are 27 years of age and that you are married but that you have no children as yet. He says that you attained a degree in Commerce and Accounting from the University of the South Pacific in 2015 and that you were a teacher at 'Apifo'ou College up until you committed this offence, and that you now teach temporarily at St. Andrews School this year, pending the outcome of your sentence for this offence.
- [5] He says that you admit that you had been truly foolish to have disregarded your parents' teachings, your father being a trusted member and preacher of the Wesleyan Church at Kolomotu'a, and a retired civil servant, and your mother being the Principal of St. Andrew School. He says that you now realise the error of your ways and of your association with persons you thought were your friends. He says that you have disassociated yourself from them and that you have now devoted your life to your wife and your families.
- [6] He recommends that you take the drug awareness course of the Salvation Army.

### **Crown submissions**

- [7] Mrs. Vainikolo, counsel for the Crown, says that 3 cases are relevant in considering your sentence:
- (a) ***R v Latuselu*** (CR328/2020). That accused pleaded guilty to having 0.70 gram of meth. He was a first offender. He was

sentenced to 9 months imprisonment but fully suspended for 2 years on condition:

- (i) he be placed on probation,
- (ii) he resides where directed by the probation officer,
- (iii) he completes the drug awareness and life skills courses as directed by the probation officer, and
- (iv) carry out 50 hours of community work.

(b) **R v 'Amaka** (CR214/2020). He pleaded guilty to possessing 0.25 gram of methamphetamine. He was sentenced to 9 months imprisonment but fully suspended for 2 years on conditions:

- (i) he be placed on probation,
- (ii) he complete the drug awareness and life skills courses of the Salvation Army,
- (iii) he serve 70 hours community service.

(c) **R v Maile** (AC3/2018). That accused had 0.52 gram of methamphetamine and had no previous drug conviction. He pleaded guilty. He was sentenced to 9 months imprisonment but fully suspended on conditions:

- (i) that he be on probation;
- (ii) that he consumes no alcohol or drug;
- (iii) that he perform 50 hours community service; and
- (iv) carry out the alcohol and drug awareness courses as directed by the Probation Services.

[8] Counsel accordingly recommends that your sentence be 9 months imprisonment but to be fully suspended for 2 years on conditions and that the methamphetamine found be destroyed.

#### **Your counsel's submissions**

[9] Your counsel, Mr. Fili, has made submissions on your behalf. He says that because you have no previous conviction and that you have pleaded

guilty and have cooperated with the police, and because you are truly remorseful for what you have done, he submits that you be given a suspended sentence. He says that your case be dealt with as the Court of Appeal dealt with the case of **Maile** to which the Crown has referred.

### **No previous conviction**

[10] All 3 persons, namely, the probation officer, Crown counsel and your counsel, have said that you have had no previous conviction, and that you are a first offender. I therefore feel that I should not take much notice of what is stated in paragraph 12 of the Summary of facts, namely:

“12. The accused has a previous criminal conviction in 2016 for driving under the influence of alcohol and for negligent driving.”

It could well have been written in error. Besides, it is not a conviction for a drug free offence, even if there is such a previous conviction.

### **Consideration**

[11] I am sure that a person as well brought up as yourself, your parents being both well-educated and established in the community, were well aware of the evils and danger of illicit drugs and the miseries they inflict, and have caused, to the young people of the country. They become users of the drugs. They cannot live without them. They have to have them. They have to buy them. They spend all their money buying them. They steal to buy them. They do anything to buy them. They are literally slaves of the drugs.

[12] The makers and suppliers and dealers of the drugs know that. They are the ones collecting and living comfortably on the monies that the enslaved users pay them to have the drugs. They pay young, and foolish, persons like you, to sell the drugs for them. You accept because of the lure of money.

[13] And this is where you end up. Here in Court facing imprisonment for doing that. I accept that that was what you were doing, although the

summary of facts makes no mention of any sum of money found on you when the police searched you and the vehicle. The amount of 0.46 gm of meth, in 4 packs of meth is clearly for the purpose of sale and not for your own consumption.

[14] However, you were not charged with selling or supplying. You were only charged with possessing and you have only plead guilty and been convicted only of possessing that amount of methamphetamine, and I can only sentence you for possessing it.

[15] I accept that you are remorseful and repentant and that you have made a change to your life since you were caught in July last year, and that you have now devoted your life to only your family and I accept that you now have a child of your marriage, as your counsel has pointed out. I also accept that you have severed your relationship with the persons with whom you had associated. Furthermore, I accept that you have resumed teaching and to utilise your training as teacher and no doubt you will instil upon your students the evils and horrors of illicit drugs in order that they keep their distance from them.

[16] I have to maintain the law which the Parliament has enacted to protect this country from the evils of illicit drugs, such as the Courts have been doing in the drug cases which have come before them, and to which Crown Counsel has referred.

### **Sentence**

[17] Accordingly, I sentence you for this offence of possessing 0.46 gram of methamphetamine at Kolomotu'a on 23 July 2020, to 9 months imprisonment but that it be fully suspended for 2 years from today upon the following conditions:

- (a) that you be placed on probation and to live and work where directed by the Probation service;
- (b) that you serve 50 hours community service as directed by the Probation service;

(c) that you attend and complete the drug awareness course as directed by the Probation Service and

(d) that you do not consume any drug during the period of suspension.

[18] I order that the police shall destroy the methamphetamine in respect of this offence forthwith.



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

Niu J

**J U D G E**

**NUKU'ALOFA: 25 May 2021.**