

Sean + AL.

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

CR 7 of 2021

REX
-v-
HARRIS SATINI

SENTENCING REMARKS

BEFORE: LORD CHIEF JUSTICE WHITTEN QC
Appearances: Ms 'A. 'Aholelei for the Prosecution
The Defendant in person
Date: 4 June 2021

The charges

1. On 30 March 2021, the Defendant pleaded guilty to possession of 0.93 grams of cannabis.

The offending

2. On or about 6 February 2021, Police received information that drugs were being sold from Paletili Afu's residence at Vaini. Police arrived at the residence and later patrolled the Vaini area where they spotted and stopped a black vehicle. The Defendant opened the door and tried to throw something out when he was stopped by police. He was removed from the vehicle together with his co-accused and searched. Police found on the Defendant a foil containing 0.93 grams of cannabis leaves. He did not co-operate with police when questioned.

Crown's submissions

3. The Crown submits the following as aggravating features:
 - (a) this offending was committed while the Defendant was on bail for CR 227/19;
 - (b) illicit drugs "are a huge problem" in Tonga.
4. The only mitigating factor is the Defendant's guilty plea.

5. The Defendant has the following previous convictions:
 - (a) Magistrates Court - 457/1996 - theft - 3 months imprisonment and \$175 fine;
 - (b) Magistrates Court - 58/02 - possession of Indian hemp - 4 months imprisonment, suspended;
 - (c) Supreme Court – AM 2/16 - possession of illicit drugs - \$500 fine or 1 month imprisonment;
 - (d) Supreme Court - CR 227/19 - possession of 1 gram of methamphetamines and a total of 4.1 grams of cannabis – offence occurred on 5 October 2018 – convicted after trial on 2 October 2020 – sentenced on 27 November 2020 to 2 years and 3 months' imprisonment, fully suspended, on conditions including 70 hours community service.

6. The Crown referred to the following comparable sentences:
 - (a) *Kolofale* (CR 166/20) – the Defendant pleaded guilty to possession of 0.75 grams of cannabis. He was convicted and discharged conditionally for 12 months.
 - (b) *Ali* (CR 196/20) – the Defendant pleaded guilty to possession of methamphetamines and 0.4 grams of cannabis. He was sentenced to 1 month imprisonment for the cannabis.
 - (c) *Kumar* (CR 249/20) – the Defendant pleaded guilty to two counts of possession of methamphetamines and 0.39 grams of cannabis. He was sentenced to 3 months imprisonment for the cannabis, which was fully suspended on conditions.

7. The Crown submits the following sentence formulation:
 - (a) a starting point of 2 months imprisonment;
 - (b) despite the Defendant's previous convictions for drugs, the amount of cannabis here is at the lower end of the range; and

- (c) therefore, the sentence should be fully suspended on conditions including 100 hours community service to be performed in addition to the 70 hours ordered in CR 227/19.

Presentence report

8. The Defendant is 45 years of age. He is the third of seven children. He grew up in a religious family. In 2005, his family migrated to New Zealand leaving him in Tonga to take care of their family home. He was educated to form 6 at Liahona High School. He is married to his third wife, who resides in California.
9. In relation to the offending, the Defendant described drugs as being 'part of his life'. His possession was for personal use only as, he said, drugs 'really help him with his work'. He denied ever selling drugs. No information was provided about his employment history or other source/s of income.
10. The Defendant is described as being 'genuinely remorseful'. His wife begs for mercy. The probation officer recommends that any sentence include an order that the Defendant attend a Salvation Army alcohol and drugs awareness course.

Consideration

11. The maximum statutory penalty for possession of less than 28 grams of cannabis is a fine of \$5,000 or 1 year imprisonment or both.
12. In light of his criminal history, a fine is not appropriate.
13. Therefore, I consider the appropriate sentence to be 1 month imprisonment.
14. But for his last conviction and sentence, this sentence would, as the Crown submitted, be fully suspended.
15. However, the Crown's submissions overlooked s 24(3) of the *Criminal Offences Act* which provides, relevantly:
- (c) In the event of the offender being convicted of an offence punishable by imprisonment committed during the period of suspension he will thereupon be sentenced to serve the term of the suspended sentence in addition to the punishment imposed for such subsequent offence.

...

(e) In special circumstances the Court may release an offender from the operation of paragraph (c) and may extend the original period of suspension for a further period not exceeding 1 year.

16. In sentencing the Defendant in CR 227/19, and fully suspending that sentence, Langi AJ stated:

32. Though the accused did not cooperate with the police and was convicted after a defended hearing I am of the view that if given another chance the accused will take the opportunity offered by a suspended sentence to rehabilitate himself. I accept the probation officers view that he is remorseful. I am also mindful that the accused has not had the benefit of being part of any kind of rehabilitation programs such as that offered by the Salvation Army Drugs and Alcohol courses. If he had undertaken these programs before I would not have been convinced to suspend his sentence. However, I believe that the minimal amount of methamphetamine seized supports his contention that the illicit drugs were for his own personal use and I believe there is still hope for him with the right assistance to overcome his addiction and become a law-abiding citizen.

...

36. As a final comment Mr. Satini, you are very fortunate that your sentence is fully suspended. The fact that you have previous convictions for possession of illicit drugs should require you to serve some period in prison especially since you pleaded not guilty to the current charge you have been convicted of. However, the sentence I have imposed was arrived at after much consideration in balancing the preventive purpose of punishment against treating the root of the problem (addiction) through rehabilitation and giving the offender an opportunity to reform. I regard the sentence as lenient but I am offering you a lifeline and an opportunity to reform and cease your involvement with illicit drugs. You should be aware that if you breach any of the conditions of your suspension you may be required to serve your sentence of imprisonment. If you appear before the court again on similar offences it is very highly likely that you will be sent to prison."

17. A suspended sentence is intended to have a strong deterrent effect: *Mo'unga v R* [1998] Tonga LR 154. And yet, less than three months after he was sentenced by Langi AJ, the Defendant committed the instant offending. As such, he breached the very first condition of that sentence, namely, that he not commit any further offences punishable by imprisonment for a period of 2 years. He has shown a flagrant disregard for the law and made a mockery of the faith Langi AJ placed in his feigned remorse and the opportunity she offered him through a fully suspended sentence. His is the sort of behaviour which also justifiably erodes public confidence in the Court's statutorily mandated endeavour to offer those

who have erred a 'second chance' to avoid prison and demonstrate a genuine and lasting desire to reform as respectful and respected members of the community. The Defendant here is presently not one of those.

18. The material before the Court does not include any information as to whether the Defendant has completed any or any part of the other conditions of that sentence.
19. No 'special circumstances' as referred to in s 24(3)(e) have been shown. Therefore, the suspension and the conditions of suspension in the sentence for CR 227/19 are rescinded, and, pursuant to subsection (c), the Defendant is required to serve the term of that suspended sentence in addition to the punishment imposed for the instant offence.

Result

20. The Defendant is convicted of possession of illicit drugs and sentenced to 1 month imprisonment.
21. The Defendant is to serve the sentence of 2 years and 3 months imprisonment imposed in proceeding CR 227/19 on 27 November 2020, in addition to the sentence imposed for this proceeding.
22. The total sentence therefore is 2 years and 4 months imprisonment.
23. During his incarceration, the Defendant is to undertake alcohol and drugs counselling with Rev. Semisi Kava of the Lifeline and Crisis Centre of the Free Wesleyan Church of Tonga.
24. Pursuant to s 32(2)(b) of the *Illicit Drugs Control Act*, the drugs the subject of this proceeding are to be destroyed.

NUKU'ALOFA
4 June 2021



A handwritten signature in blue ink, appearing to read "M. H. Whitten".

M. H. Whitten QC
LORD CHIEF JUSTICE

