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

CR 146 & 148 of 2020

R E X

-v-

Tevita 'ALATINI  
Kautai MOALA

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**SENTENCING REMARKS**

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BEFORE: HON. JUSTICE COOPER  
Counsel: ✓ Mr. F. Samani for the Prosecution  
Ms A. Kafoa for the first Defendant  
Mrs S. Ebrahim for the second Defendant  
Date of sentence: 2<sup>nd</sup> June 2021

**The charges**

1. Count 1, Tevita 'Alatini, possession of 0.063 g Methamphetamine contrary to section 4 (a) Illicit Drugs Control Act.
2. Count 2, Count 1, Tevita 'Alatini, possession of 0.234 g Methamphetamine contrary to section 4 (a) Illicit Drugs Control Act.
3. Count 4, Tevita 'Alatini, Anaseini Taione and Kautai Moala possession of 19.49 g Methamphetamine contrary to section 4 (a) Illicit Drugs Control Act.
4. Mr. Alatini and Mr. Moala both fall to be sentenced in respect of the counts on the indictment they were convicted of.
5. Mr. Alatini in respect of possession of a total of 0.297 g methamphetamine and Mr. Moala for possession of 19.49 g methamphetamine.

29 JUN 2021  
JHC

6. Mr. Alatini's case is quite different to that which Mr. Moala faces. Mr. Alatini was caught with a relatively small amount of the drugs and I have seen no evidence to suggest it was anything other than personal use.
7. Therefore in considering the sentence my starting point is the case of *Zhang v R* [2019] NZCA 507. This would fall under band one where up to 5 g of Methamphetamine attracts a sentence range of Community Order up to 4 years' imprisonment.
8. I have also considered *R v Maile* AC 23/2018, the defendant was in possession of 0.52 g Methamphetamine, for an early guilty plea his sentence on appeal was 9 months fully suspended with conditions.
9. Here there was not a guilty plea and despite literally being caught with some of the drugs in his pocket he chose to contest the matter.
10. In his probation report he continues to deny the offences; in count 1, drugs found in his very pocket.
11. I therefore sentence him to a year in prison, as this offence is so serious that only a custodial sentence will suffice.
12. Because of his continued denial of the offence I am forced to conclude that he shows no remorse and is at high risk of re-offending.
13. Sentence to 12 months imprisonment on count 1
14. Count 2, 4 months concurrent.
15. He will serve 6 months and the remaining 6 months I shall suspend that sentence for 2 years.  
  
And, that he satisfactorily complete a drug rehabilitation course at the direction of his probation officer;  
  
Commits no offences punishable by imprisonment.
16. I note that had he admitted the offences in his pre sentence report then matters would have turned out differently for him.
17. But his continued denial is an expression of contempt for the verdict or any real appreciation of his criminality.
18. Should he commit any further imprisonable offences within that time he will be sentenced to this term of custody as well as being sentenced for the other matter.

**I turn to Mr. Moala.**

19. On the evidence before me I infer he was running this operation to supply methamphetamine. He was even driving users to the address, as was the case when arrested. He had Mr. 'Alatini working for him, who no doubt was guarding the piggery as well as acting as a lookout; probably more, but that I discount for purposes of sentence.
20. The pre sentence report makes really appalling reading; the Town Officer reported to the author of the report that Mr. Moala is identified in the community as a supplier of drugs and uses young boys from the community to run drugs for him.
21. I have carefully considered whether I can take this into account at sentence.
22. On this occasion I do not believe it is necessary.
23. The Crown should in future seriously consider charges of supply when that can be inferred in that the possession was with intent to supply, as is plain here from the surrounding facts.
24. In terms of comparative cases it is important to achieve consistency as between the Judges here as well as for myself.
25. I start with first principals and have reviewed the guidance in *R v Fatu* [2006] 2 NZLR 72 (CA), *R v Zhang* [2019] NZCA 507.
26. *R v Laimani*, a starting point of 3 ½ years for 5.15 g methamphetamine, when plainly involved in dealing.
27. *R v Ngaue* (Unreported, Supreme Court, CR 06 of 2018). Justice Cate took a starting point of 4 ½ years for possession 14.5 g, following the then current guidance of *Fatu*.
28. The problem of drugs has subsisted over these years since that time.
29. The need for firmer action has been seen and marked in recent years.
30. *R v 'Amusia He 'A Mateni* ( Unreported, Supreme Court, CR 213 of 2020) 8.08 g of methamphetamine Whitten QC LCJ considered that, after trial, the starting point ought be 4 years.
31. *R v Latu* 289/2020 Whitten QC LCJ, 50.22 g merited 6 year starting point.

32. I have also considered the UK Sentencing Guidance in relation to possession with intent to supply class A drugs and the Culpability factors present in this case;

- Management function within a chain
- Involves others by influence
- Motivated by financial advantage

33. Taking all this together I find that the starting point should be 4 ½ years, which I increase to 5 ½ years to reflect the fact that he established a place to deal the drugs, had at least one person, Mr. 'Alatini working for him, drove users himself to the location and made a commercial enterprise from his criminality.

34. I do not decrease the sentence for lack of previous convictions because it is obvious he was at this offending for some time. He did not just start on 3<sup>rd</sup> May 2019, the date of his arrest. He simply had not been caught before.

35. The last 6 months I will suspend for 2 years on the following conditions:

- i. That he satisfactorily complete a drug rehabilitation course at the direction of his probation officer;
- ii. Commits no offences punishable by imprisonment

36. When it comes to ancillary order, I am very disappointed that the money seized in the police search was returned to the defendant's wife on her word. It should always be for a court to decide the status of any money seized in these circumstances.

37. All drugs and paraphernalia are subject to forfeiture and destruction order.

38. Any breach of that part of the sentence or any failure to comply with the conditions and he will be re-sentenced. I reserve the case to myself.

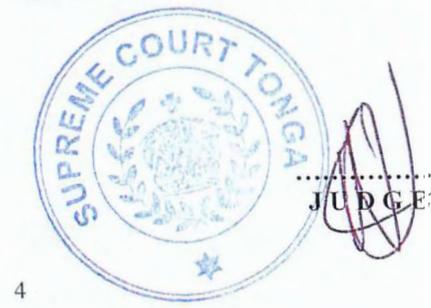
NUKU'ALOFA  
2 June 2021

The image shows a circular blue seal of the Supreme Court of Tonga. The seal features a central emblem with a crown and two lions, surrounded by the text 'SUPREME COURT TONGA'. To the right of the seal is a handwritten signature in blue ink, which appears to be 'N.J. Cooper'. Below the signature, the word 'JUDGE' is printed in blue capital letters.

Sgd. N.J. Cooper  
JUDGE

Issued pursuant to O. 28 Rule 5 Supreme Court Rules to correct a clerical mistake.

NUKU'ALOFA  
28 June 2021

The image shows a circular blue seal of the Supreme Court of Tonga, identical to the one above. To the right of the seal is a handwritten signature in blue ink. Below the signature, the word 'JUDGE' is printed in blue capital letters.

JUDGE