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

CR 55 of 2021

R E X

-v-

Soape Ta'e'iloa KOKA

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**SENTENCING REMARKS**

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BEFORE: THE HONOURABLE COOPER J

Counsel: ✓Ms. Kafa for the Prosecution

Mr. Tu'utafaiva for the defendant

Date of sentence: 3<sup>rd</sup> June 2021

1. Mr. Koka appears before me having been convicted of an offence under section 109 Criminal Offences Act, that is Discharging a Firearm with intent to intimidate.
2. It was on 22<sup>nd</sup> December 2020 about 1000 hrs that Miss Taukatelata dropped off her partner, Mr. Touhuni, at the defendant's home so the two men could go wild pig hunting.
3. He then called her to pick him up later that day, maybe some time around 1900/2000 hrs.
4. When she arrived back at the defendant's residence, Mr. Touhuni was not ready. The men were still butchering the pigs that they had shot. This led to Miss. Taukatelata becoming angry, a row developed between her and her partner and she started to yell and swear.
5. She was candid about this in the victim impact report.
6. The defendant became involved, telling her to stop shouting.

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7. She was in the car and had started to drive away, without her partner, but she had her 14 year old daughter with her, who was in the front passenger seat.
8. The defendant took a shot at her car.
9. Described in the summary of facts as being the top left side of the windshield; it would have been more accurate to say that the shot hit the glass almost exactly in line with where Miss. Taukatelata was sat and very close to head height.
10. She then heard another shot and drove to the local police station in Vaini and reported the matter.
11. Mr. Koka was arrested on 24<sup>th</sup> December 2020 and interviewed and admitted the offence. The police armourer examined the gun, described as a .22 Magnum rifle, and found it to be in good working order.
12. The defendant appeared before me on 8<sup>th</sup> April and pleaded guilty.
13. The photographs of the damage to the car and the gun itself were made available to me on 7<sup>th</sup> May 2021. The photographs show where the windshield was struck by the bullet. The glass does not appear to have been pierced, but a starburst of fractured glass shows the point of impact.
14. I have also read the victim impact statement. It sets out how Miss Taukatelata was very scared, drove straight off as fast as she could. She was scared for her young daughter too.
15. It mentions how later that day she noticed her daughter “staring blankly at nothing” seemingly exhibiting signs of clinical shock.

### **Sentence**

16. The maximum sentence for an offence under this section is 5 years’ imprisonment.
17. I have not been able to find any comparable cases and so have turned to the United Kingdom’s Sentencing Guidance relating to Firearms Offences, which came into force on 1<sup>st</sup> January 2021.
18. Here I have looked at the closest comparable offences; possession with intent to cause fear of violence. That is an offence that carries a 10 year maximum.
19. <https://www.sentencingcouncil.org.uk/offences/crown-court/item/firearms-possession-with-intent-to-cause-fear-of-violence/>

20. Possession with intent to cause fear of violence; high culpability as the firearm was discharged, category 2 as serious psychological harm . a 4 year starting point with a range of 3-6 years.
21. I have also considered the offence of Possession with intent to endanger life. Which has a maximum tariff of life imprisonment.
22. <https://www.sentencingcouncil.org.uk/offences/crown-court/item/firearms-possession-with-intent-to-endanger-life/>
23. In the latter category, this offence would fall under High Culpability, because the firearm was discharged and category 2, because of the serious psychological harm that was caused. That would have given a starting point of 14 years with a range of 11-17 years.
24. I pause to note that throughout the papers it is Miss Taukatelata who is described as being the victim, it is absolutely plain that both her and her daughter were the victims in this.
25. I also note that this was an offence against women. That they were sitting targets, that they were extremely vulnerable and that one is a child.
26. Therefore I conclude this is one of the most serious examples of an offence under this section.
27. I have read the pre sentence report and taken into account everything written about him and all positive aspects of his character, especially church and community involvement and most importantly his lack of previous convictions. It troubles me that he still makes reference to complainant in that he does not want her to attend his home and swear as before. That tends to deflect from his criminality nor does it properly acknowledge the fact Miss Taukatelata is the victim or the dreadful impact on her daughter, nor does it suggest he has the first idea that violence against women in any circumstances is totally unacceptable.
28. I therefore conclude that had Mr. Koka contested this and been convicted after trial he would have deserved a sentence of 4 years' imprisonment.
29. Because he pleaded at the earliest opportunity I give him maximum credit; 30%.
30. That means a reduction of 1.2 years. Leaving a sentence of 2 years and 9 months.
31. Because of his lack of previous convictions the last 12 months I shall suspend for 24 months on the following conditions :

- i. Not to commit any offence punishable by imprisonment
  - ii. Undertake and satisfactorily complete the Salvation Army Anger Management Course. Any breach and he will be resented to the remaining portion of his sentence.
32. That gives a total sentence of 2 years and 9 months' imprisonment, the last 12 months suspended on the above conditions.
33. I recommend that his gun is seized and destroyed and that he never be allowed to hold a certificate for ammunition or firearms ever again.

**NUKU'ALOFA**  
**3 June 2021**

