

Sum + file

IN THE SUPREME COURT OF TONGA

CRIMINAL JURISDICTION

NUKU'ALOFA REGISTRY

CR 256 & 126 of 2020

REX

-v-

PANGI PULOKA

CR 256/2020

BEFORE : **HON. JUSTICE NIU**

Counsel : Mr T. 'Aho for the Crown
Mrs A. Tavo-Mailangi for the Accused

Plea : not guilty

Convicted : 26 February 2021 after trial (on 25, 26 and 27 January 2021)

Report : by Probation Officer, Tito Kivalu, 30 March 2021

Submissions : by Mr 'Aho on 26 April 2021
By Mrs Mailangi on 7 May 2021

Sentencing : 21 May 2021

CR 126/2020

Plea : not guilty

Convicted : by JUSTICE LANGI on 8 February 2021 (after trial)

Sentencing : 21 May 2021

SENTENCING

- [1] Pangi Puloka, you have committed 4 offences, namely,
- a) CR 126/2020 with 2 counts, namely, that on 19 April 2019, at Hofoa, and jointly with Faka'osi Katoa, you knowingly and without lawful excuse, possessed:
 - count i. methamphetamine weighing 0.2 gram, and
 - count ii. cannabis weighing 1.48 grams, and
 - b) CR 256/2020 with 2 counts, namely, that on 23 March 2020 at Mataki'eua, you knowingly and without lawful excuse, possessed:
 - count i. methamphetamine weighing 4.34 grams, and
 - count ii. methamphetamine weighing 2.17 grams.
- [2] You pleaded not guilty to all 4 offences but Justice Langi found you guilty after trial of the offences at Hofoa, and I found you guilty after trial of the offences at Mataki'eua. You now appear for sentence for those 4 offences.
- [3] You have appealed against your conviction of the offences at Hofoa but I still have to sentence you today for those offences for these reasons. If you disagree with the sentence I shall impose, you should also appeal against it so that both conviction and sentence would be dealt with by the Court of Appeal at the same time. If your appeal against conviction is upheld, the sentence I will now impose will be quashed but if the appeal is dismissed the sentence will still be considered by the Court of Appeal if you also appeal against it as well.
- [4] I need not recount the facts of these offences as they have been described in detail in both judgments in which you were convicted of them, but I would point out that you were found to have had possession of the 2 lots of methamphetamine at Hofoa because Justice Langi found that you were familiar with the habit of Faka'osi Katoa of carrying his methamphetamine and cannabis in his hard drive he was always carrying. And that when he came into your caravan and left his hard drive on the table beside where you were laying to rest while he went outside to play pool, you were in possession of the methamphetamine and cannabis in the hard drive because you knew they were there and you had control and knowledge of the hard drive and it was in your caravan. The police found the methamphetamine and cannabis there and you saw them there. At that time, you and Faka'osi both had knowledge and control of them. You were both rightly convicted by Justice Langi for possessing them. You have not appealed my conviction of you for the Mataki'eua offences and so I will not repeat what happened there.

Your circumstances

- [5] The probation officer says that you are 47 years old. You were married before and have 2 children aged 24 and 22 from that marriage and you are married again with 2 children aged 6 and 4 from that marriage, and you are still living with your wife and the 2 young children. He says that you work as auto mechanic at home and that together with takeaway food sold by the wife, you make about \$1,000 a week.
- [6] He says that you told him that you had started taking drugs since 1992 and that you have associated with and know the drug users and dealers ever since, and that you told him that you have decided last year, when you married your present wife, that you would cease any further involvement with drugs. Furthermore, he says that you have made plans to have a radio talk programme to tell the public of the evils of drugs.
- [7] He says that you told him that you have served 2 terms of imprisonment each for 6 years, for possession of drugs, but that you show no remorse or regret for what you did. He says that you and your wife have asked for the Court's leniency and mercy.
- [8] He recommends that your imprisonment sentence be partially suspended on condition that you take no drug and that you take the Salvation Army course on Alcohol and drug awareness during the period of suspension.

Crown submissions

- [9] Mr 'Aho for the Crown says that, in accordance with the sentences imposed in 4 comparable cases to your case, namely, *R v Tengange* (CR 231/2019), *R v Unga* (CR 28/2019), *R v Hu'akau* (CR 247/2020) and *R v Kumar* (CR 249/2020), your sentence be 18 months imprisonment, and that you are not eligible for any suspension under the guidelines in the case of *Mounga v R* [1998] Tonga LR 154, but that there be partial concurrency of the sentences for the offences at Hofoa and the sentences for the offences at Mataki'eua.

Your counsel submissions

- [10] Mrs Tavo-Mailangi, your counsel, has reiterated the matters which the Probation Officer has stated and says that you have made determined efforts to change your life and not to reoffend and that you have conducted regular media talk shows about the evils of drugs and domestic violence. She asks that you be given a fully suspended sentence on conditions recommended by the probation officer.

Consideration

- [11] I have to accept that the amount of methamphetamine with which you have been found guilty comes to a total of 6.71 grams. That is a substantial amount and it only indicates one thing, namely, that you had it for the purpose of supply and sale, although you were not charged and you are not convicted of supply or of sale of the methamphetamine. But I also accept that the penalty provided by the law for the offence of possessing methamphetamine was the same as for the supply and the sale of methamphetamine, namely, imprisonment of up to 30 years or fine up to \$1,000,000 or both.
- [12] In the cases referred to by the Crown, none of those cases had any methamphetamine in excess of 1.0 gram. In fact, they were all below 1.0 gram. In your case, you had 1.48 gram of cannabis and 0.2 gram of methamphetamine at Hofoa, and you had 4.34 grams and 2.17 grams both of methamphetamine at Mataki'eua.
- [13] I consider that your offences are more in line with the offences of *Uasike* (CR 161/2019) who was in possession of 3.48 grams of methamphetamine and was sentenced to 2 years 9 months with the last 1 year being suspended, and the case of *Hafoka* (CR 72/2020) who possessed 7.79 grams of methamphetamine and was sentenced to 3 years 6 months imprisonment with the last 9 months being suspended.
- [14] I therefore consider that both your offences at Hofoa be a total of 3 months imprisonment and that both your offences at Mataki'eua be a total of 3 years imprisonment, so that your 4 offences come to a total prison sentence of 3 years 3 months. I however consider that some deduction be made in view of both sentences being dealt with together. I believe that serving only one third of the lesser sentence is appropriate. So that you only serve in all 3 years 1 month, and not 3 years 3 months.
- [15] As to suspension of that sentence, I do not consider that you qualify under any one of the 4 guidelines laid down by the Court of Appeal in the *Mo'unga Case* because
- a) under guideline 1, you are not a young offender and you are not a first offender and you have not had a long period free of criminal activity. You committed 2 offences and were imprisoned for 6 years twice, as you told the probation officer, and then you committed the offence in Hofoa in 2019 and you then committed the offence in Mataki'eua in 2020.
 - b) under guideline 2, you are not **likely** to take the opportunity of suspension to rehabilitate yourself. Your history up to now has proved that you have not rehabilitated yourself at all.

- c) under guideline 3, there was no provocation, coercion or absence of premeditation when you committed these offences, and
- d) under guideline 4, you have not cooperated with the authorities at all. You told the probation officer that you know all the drug dealers but you do not reveal them at all in order to help the authorities stop the supply and sale of drugs in Tonga. You thereby allow them to continue dealing and supplying the drugs in Tonga. You did not cooperate with the police to save them the time and costs of your trials either.

[16] You are therefore not eligible to full or partial suspension of your sentence. All that you would be entitled to is the remission of the one-quarter of your sentence for good behavior whilst serving it.

Sentence

[17] Accordingly, I sentence you as follows:

- a) for possession of 0.2 gm of methamphetamine in count 1 of your offence at Hofoa, you are sentenced to 3 months imprisonment.
- b) for possession of 1.48 gm of cannabis in count 2 of your offence at Hofoa, you are sentenced to 1 month imprisonment, which shall be concurrent with your sentence in (a) above.
- c) for possession of 4.34 gm of methamphetamine in count 1 of your offence at Mataki'eua, you are sentenced to 3 years imprisonment.
- d) for possession of 2.11 gm of methamphetamine in count 2 of your offence at Mataki'eua, you are sentenced to 1 year 6 months imprisonment, which shall be concurrent with your sentence in (c) above.
- e) your sentences in (a) and (b) shall partly be consecutive to your sentences in (c) and (d), namely, a period of 2 months shall be concurrent with your sentences in (c) and (d), so that you will serve a total of 3 years 1 month only for all your said 4 offences.

[18] I order that the illicit drugs in respect of your offences be forthwith destroyed by the police.



A handwritten signature in blue ink, appearing to read "Niu J", is written over the right side of the seal.

Niu J

J U D G E

Nuku'alofa: 21 May 2021