

Sum + file

IN THE SUPREME COURT OF TONGA

CRIMINAL JURISDICTION

NUKU'ALOFA REGISTRY

CR 129 of 2020

REX

-v-

VILIAMI NA'A

BEFORE HON. JUSTICE NIU

Counsel : Mr 'Inoke Finau for the Crown
The accused for himself

Plea : Not guilty but convicted on 8 February 2021 after trial
before Justice Langi

Report : by Probation Officer, 'Ema To'ia, on 19 April 2021

Submissions : by Crown on 19 April 2021
: by the accused on 13 May 2021

Sentencing : 21 May 2021

SENTENCING

Offence

[1] Viliami Na'a, you committed one offence on 19 April 2019 at Hofoa when you possessed 0.99 gm of cannabis knowingly and without lawful excuse. You were arrested with 3 other persons at Pangi Puloka's home at Hofoa and you all denied your respective offences but you were all convicted after your joint trial before Justice Langi, on 8 February 2021. You now appear before me for sentence.

Previous convictions

- [2] You have 3 previous convictions, only the last one of which was for illicit drug and you were sentenced in the Magistrates Court in CR 438/2020 to 15 months imprisonment but which was to be served concurrently with your imprisonment sentence of 6 years 9 month for causing grievous bodily harm in CR 115/2019, a sentence issued in the Supreme Court.

Report

- [3] You told the probation officer that you have had an unfortunate start to your life in that your parents left to the U.S. whilst you were only very young, leaving you and your brother who is older than you and your 3 siblings in the care of your mother's parents. You grew up knowing only your grandparents as your parents and that they spoiled you so that when you went to college you went off with your friends. You said that you began to smoke and drink. And when you were 15 or so you and all your siblings went to the U.S. to your parents, but you did not know them and they did not know you. You missed your grandparents altogether. You ran away from home and you never went back to your parents. They did not even want you back because they did not come or try to take you back. You then hung out with gangs and did drugs and things they did until 2016 when you caused bodily to someone and you were deported back to Tonga. Only your grandmother was there but you did not want to bother her so you just lived where you could find. You did body tattooing for your living and you met your girlfriend and lived with her and you met Pangi Puloka who allowed you to occupy one caravan at his home at Hofoa. Your girlfriend was pregnant at the time the police came to the home that evening and was in the caravan while you were at the shop to get something, and that when you returned, you were arrested and charged with this offence. You now have a daughter but you are now serving a 6 year prison sentence for the grievous bodily harm offence.
- [4] She says that you just do not see where your life is going anymore because your girlfriend and your daughter are now moving on with their own life.
- [5] She recommends that you be given a fully suspended sentence for your present offence and that you be given counselling by the Drug counsel at the prison, Rev. Semisi Kava.

Crown submissions

- [6] Crown counsel, Mr Finau, says that the appropriate sentence for you, considering the several cases to which he refers to in his submissions, is 3 months imprisonment, but to be partially suspended, and that the operative part be cumulative to the present sentence you now serve.

Your submissions

- [7] I asked you in Court on 13 May 2021 what you thought about that recommendation by the Crown and you told me that it was alright and that you agreed to it. You however

told me that you were kept in custody for 1 year after you were arrested on 19 April 2019. I was concerned and Mr Finau was not aware of it and so I asked him to find out what had happened.

- [8] Mr Finau has now provided me with an account of what happened and it confirms that you were all arrested on the night of 19 April 2019, but you were also all released on bail the following day 20 April 2019. It was not remembered by the Magistrate or the police on that day that a warrant had already been issued to arrest you for nonattendance on 18 March 2019 in respect of your criminal matter CR 115/2019 (the grievous bodily harm matter). You were finally subsequently arrested for that matter and you were refused bail because of your breach of bail by failing to attend before and by moving from your place of residence without informing the police.
- [9] You did not appeal to the Supreme Court to grant you bail, if you thought you were wrongly refused bail. I therefore cannot consider making any allowance in your sentence for the present offence in respect of any period during which you have been in custody.

Consideration

- [10] Considering the amount of cannabis which you had in your possession, I agree with the recommendation of the Crown that you be sentenced to 1 month but that it be served after and cumulative to your current sentence for the grievous bodily harm.

Sentence

- [11] Accordingly, I sentence you as follows:

for possessing of 0.99 gm of cannabis, you are sentenced to 1 month imprisonment which you shall serve after, and cumulative to, your sentence which you presently serve under CR115/2019 for the offence of causing grievous bodily harm.

- [12] I order that the drug in respect of your offence be destroyed by the police 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: 21 May 2021