

Sean + He

IN THE SUPREME COURT OF TONGA**CRIMINAL JURISDICTION****NUKU'ALOFA REGISTRY****CR 292 & 127 of 2020****REX****-v-****FAKA'OSI KATOA****BEFORE HON. JUSTICE NIU**

Counsel : Mr 'Inoke Finau for the Crown.
Mr. S. Tu'utafaiva for Accused.

Plea : Not guilty but convicted of 2 counts in CR 127/2020 by Justice Langi on 8 February 2021.
: Guilty to 1 count in CR 292/2020 before Justice Niu on 20 May 2021.

Report : by Probation Officer, Patelesio Pale, 19 April 2021
re CR 127/2020.

Submissions : by Crown on 26 April 2021 and 20 May 2021.
: by the accused in Court on 3 May 2021 and 20 May 2021

Sentencing : 21 May 2021.

SENTENCING

Offences

[1] Faka'osi Katoa, you committed 2 offences on 19 April 2019 at Hofoa, namely, you jointly with Pangi Puloka, knowingly possessed without lawful excuse methamphetamine weighing 0.2 gm as charged in count 1, and cannabis

weighing 1.48 gm as charged in count 2. Although you denied you committed them, Justice Langi tried you for those offences and found you, and Pangi Puloka, both guilty and convicted you two accordingly.

- [2] You also committed another offence on 6 April 2020 at 'Utulau, namely, you knowingly possessed 0.12 gm of methamphetamine without lawful excuse. You pleaded not guilty but on the day of the trial, yesterday, 20 May 2021, you changed your plea and pleaded guilty before me and I convicted you of that offence.
- [3] The drugs found at Hofoa were found in a hard drive belonging to you and which you took with you to Pangi Puloka's caravan and left it on a table beside where Pangi was lying down to rest, while you went out and played pool. Pangi knew that you had the drugs in the hard drive. You were both accordingly convicted. You also had with you \$320.
- [4] As to the offence in 'Utulau, the police received information that you were driving around selling drugs in your vehicle numbered ZIDE OUT. The police looked and found and stopped your vehicle and you tried to swallow the pack of meth you had left. It was later confirmed to be meth and it weighed 0.12 gm.

Probation report

- [5] The probation officer says that you are 43 years of age, that you are married and have 2 children but that your wife and 2 children are presently in Australia for many years now. He says that your income is only from helping people to import vehicles from Japan and from designing billboards and motor vehicle stickers.
- [6] He says that you had studied at Tonga College and that was where you became acquainted with Pangi Puloka who also studied there. You told the officer that you met up with Pangi Puloka again after you returned from New Zealand with your family in 2009 or so, and that after your wife and child left to Australia in the same or following year, you then began associating with Pangi Puloka for the purpose of drugs.

- [7] He says that you have told him that you have now decided to change your life and to quit your association with drugs and its users and dealers.
- [8] He recommends that you be ordered to take and complete the Salvation Army courses on drug and alcohol awareness because they would help you keep away from drugs.

Crown submissions

- [9] The Crown counsel submits that an appropriate sentence for your offences is imprisonment for 12 months for the methamphetamine and imprisonment for 2 months for the cannabis, both sentences to be served concurrently. He says that you do not qualify for suspension of all or any part of your sentence.

Your submissions

- [10] On 13 May 2021, you attended before me and told me that you have found work, other than your work you presently do for Provider Finances from which you receive \$350 per week, and that work is washing motor vehicles of a rental company during the weekend, for which you receive \$150.
- [11] You told me that you have now devoted all your time to those jobs and that you now have no time to be involved with drug dealers or to look to them for money. You said that you have also discussed the matter with your wife and with your children and that you are all agreed that you will live and work only legitimately and that you have now been doing that since you were arrested again in April last year.
- [12] You also told me that you were refused bail after you were arrested for the Hofoa offences and that you were remanded in custody for 3 months until released on bail. I have considered that and I consider that I cannot reduce your sentence for that because you did not appeal it and it must be deemed to have been necessary that you be refused bail as required under the Bail Act.

Consideration

- [13] I consider that you be sentenced for the Hofoa offences for much more than Pangi Puloka has been sentenced, because you were the one who owned those drugs which were found in the hard drive. You also had \$320 in cash which was clearly proceeds of sale of the drugs you had had.
- [14] I agree that the appropriate term of imprisonment be 12 months for the meth and 2 months for the cannabis and that they be served concurrently. But I do not agree that they be suspended at all. You are not a first offender because you committed the first offence in Hofoa in 2019 and a year later you committed the other offence in 'Utulau in 2020. So you do not qualify under guideline 1 of the 4 guidelines under **Mo'unga's Case**.
- [15] You do not qualify under guideline 2 either because you are not likely to make use of the opportunity of a suspended sentence to rehabilitate yourself to be law abiding. You have had since April 2019, 2 years ago to change and rehabilitate yourself but you did not. You went and committed the offence in 'Utulau in April 2020 instead. And you showed no remorse and you maintained you did not commit those offences until now. After you have been convicted for the Hofoa offences you did not appeal that conviction and now on the day set for your trial for the 'Utulau offence, you changed your plea and pleaded guilty. I do not see any evidence that you are likely to rehabilitate yourself.
- [16] You have committed these offences without coercion or provocation and with full premeditation.
- [17] And finally you have not cooperated with the authorities, in particular, to inform the police of the names and addresses of your supplier or your customers, in order that the police are able to properly combat the supply and sale of drugs and use of drugs in Tonga.

Sentence

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

(a) for possessing 0.2 gm of methamphetamine at Hofoa on 19 April 2019 in count 1 of CR127/2020, you are sentenced to 12 months imprisonment.

(b) for possessing 1.48 gm of cannabis at Hofoa on 19 April 2019 in count 2 of CR127/2020, you are sentenced to 2 months imprisonment which shall be served concurrently with the ¹²6 months sentence in (a) above. *ku*

(c) for possessing 0.12 gm of methamphetamine at 'Utulau on 6 April 2020 in CR292/2020, you are sentenced to 6 months imprisonment, but of which 3 months shall be served concurrently with the 12 months sentence under (a) above, so that in all you serve a total of 15 months imprisonment.

and all contents
[20] I order that the sum of \$320 which was found on you at Hofoa on 19 April 2020 is forfeited to the Crown in pursuance of S.33(3) of the Illicit Drugs Control Act. *ku*

[21] All the drugs which are the subject of these offences shall forthwith be destroyed by the Police.



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Niu J
JUDGE

Nuku'alofa: 21 May 2021