

Sum + Aho

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

CR 272 of 2020

REX

-v-

Tipiloma FUNAKI

SENTENCING REMARKS

BEFORE: THE HONOURABLE COOPER J

Counsel: ✓ Mr. T. 'Aho for the Prosecution

Defendant in person

Date of trial: 29th July 2021

1. On 15th February 2020 at approximately 0400 hrs police, acting on information, followed the defendant's car to a residential address.
2. The defendant was arrested inside and recovered from throughout the address were a total of 43 individually sealed packets of cannabis, a test tube and \$450 and a single packet of methamphetamine.
3. The methamphetamine weighed 0.25 g and the cannabis 108.33 g.
4. The defendant appeared before me 1st July 2021 on a warrant on having failed to attend his trial listing on 28th June 2021, where upon he pleaded guilty to the counts on the indictment.
5. I have taken into account all matters of mitigation before me and the pre-sentence report.

6. At this point I should note that he was sentenced on 27th July 2021 in the Magistrates' Court as follows :
 - Count 1 - Possession of a Class A Drug - 8 months' imprisonment;
 - Count 2 - Possession of a Class B Drug - 3 months' imprisonment;
 - Count 3 - Possession of Utensils - 1 month imprisonment.
7. All sentences concurrent, and the final 2 months suspended for 9 months on conditions.
8. The totally principle demands I must therefore take into account the sentences passed in the Magistrates' Court very recently when I sentence Mr. Funaki today.
9. Given the weight of Methamphetamine involved in the present case, mindful that this case pre-dates the amendment to the Illicit Drugs Act, I bear in mind *R v Metui Funaki* 297/2020; Chief Justice Whitten of Queen's Counsel; a 9 month sentence of imprisonment fully suspended upon a guilty plea; *R v Taufu Latusele*, 0.70 g methamphetamine and a trifling quantity of cannabis; Chief Justice Whitten QC, again upon a guilty plea 9 months' imprisonment fully suspended.
10. From the evidence there is nothing to show that methamphetamine was possessed with the purpose of supply in this case.
11. I therefore sentence him to 8 month's imprisonment concurrent to the term imposed in the Magistrates' Court on that count.
12. Turning next to the possession of the Cannabis possession.
13. Given the presence of the cash, the quantity of dealer bags, I infer that this was possession with the purpose of supply.
14. In *R v Likamani Fa'aoso* 240/2020 Chief Justice Whitten considered a sentence of 24 months, for possession with the purpose of small commercial supply when the amount was 165.37 g Cannabis.
15. This is in line with and follows from the case of *Terewi* [1993] 3 NZ 62 which set a band of up to 4 years for small commercial cultivation, as adopted in the case of *R v Vea* [2004] TOCA 7.

16. *R v Likamani Fa'aoso* 240/2020 is the most recent comparable sentence in terms of date of offence and weight.
17. To my mind what should follow is a starting point of 14 months in this case to reflect the fact that it was 108.33 g and that I infer it was possession for the purpose of supply.
18. For a guilty plea at the day of trial the only discount that can be available is 10%; effectively 1 ½ months.
19. That would give a starting point of 12 ½ months' imprisonment. This Court would have imposed an overall sentence of 12 ½ months concurrent on all counts. Given the sentence already imposed, I sentence Mr. Funaki to 4 ½ months' imprisonment on the possession of the Cannabis to be served consecutively to the sentence of the Magistrate on 27th July 2021.
20. Overall, as between these two cases, he is to serve 12 ½ months' the last 2 months suspended for 9 months on the conditions imposed in the Magistrates' Court.
21. The money is to be forfeited and drugs and any mobile phones seized and any such other paraphernalia to be destroyed.

NUKU'ALOFA
29 July 2021

