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IN THE SUPREME COURT OF TONGA

CRIMINAL JURISDICTION

NUKU'ALOFA REGISTRY

CR 302 of 2020

REX

-v-

WESLEY FIFITA

BEFORE HON. JUSTICE NIU

Counsel : Mrs. 'E. Lui for the Crown.
The Accused for himself.

Plea : Not guilty but convicted (after trial) on 12 May 2021.

Report : by Probation Officer, Mr. Patelesio Pale, on 9 June 2021.

Submissions : by Crown on 2 July 2021.
by the Accused on 6 July 2021.
Oral submissions of the Accused on 7 July 2021.

Sentencing : 14 July 2021.

SENTENCING

The Offences

- [1] Wesley Fifita, you have committed an offence of possessing 0.04 gram of methamphetamine and an offence of possessing 0.66 gram of cannabis knowingly and without lawful justification at Pili on 16 June 2020.
- [2] The police had information that there was drug being sold at a house at Pili and they came to that house and found you and another man there, and upon

searching the house, they found the two drugs. Neither of you admitted whose drug it was and so you were both arrested. But then you told the police that both the drugs were yours and that the other man was innocent and had not known of it. The house was yours and you were the one living in it and the other man was only visiting you that evening. The man was accordingly released and you were taken to the police station and later taken to Court and charged with possessing these 2 drugs. You pleaded not guilty and after trial, I convicted you of the offences, and you now appear for sentence on them.

No previous conviction

- [3] Both the Crown and the probation officer confirm that you have no previous conviction.

Report

- [4] The probation officer says that you are 29 years old, single and have no children. All your 5 brothers and sisters, who are all older than you, are married and settled down with their spouses and children. None of them has had any trouble with the law.
- [5] You were educated properly, like all your siblings. You attained a diploma in business in 2012 at the age of 19 and you were employed at the Port Authority from 2014 to 2019, but you were dismissed because of your repeated lateness to work.
- [6] It is clear that you were on the drugs and that was why you were repeatedly late to work and it is also clear that after you were dismissed and had no income to buy the drugs you then dealt in drugs by selling drugs so that you would continue to have drugs for your use, and that you did that until you were caught in June 2020.
- [7] At that time, you were living on your own in your own house on your own town allotment at Pili, the house in which you were caught with the drugs, and that after you were caught, your parents got you to come back and live with them so that they would watch that you did not continue to do what you were doing. They still do that up to now.

[8] He says that you have now found a job with the restaurant and catering business, Ancient Tonga, in Ma'ufanga, and he attaches a letter from the Manager of that business which confirms that you have worked there since April this year. The Manager says that you handle the accounts and tax matters of the business and that you also handle the day to day running of the business. She says that you are a great asset to the business and that you work hard with devotion. She sees a bright future for you in accounting.

[9] The probation officer says that you have accepted your conviction and have expressed your remorse for what you have done and that you have learnt your lesson not to touch the drugs again. He, however, thinks that you would benefit from the programme of the Salvation Army on drugs, to ensure you would not return to its use, and he thinks that some community work be also required for you to do.

Crown submissions

[10] Crown counsel says that there are these aggravating factors against you:

- (a) that illicit drugs are a significant community and government concern;
- (b) that you are a drug user; and
- (c) that you did not cooperate with the police in that you did not plead guilty.

[11] In your favour, she says that there are these mitigating factors:

- (a) that you are a first offender;
- (b) that you cooperated with the police by admitting the offence;
- (c) that you are remorseful;
- (d) that you are young and have a chance to rehabilitate; and
- (e) that you have a good educational background.

[12] She refers to the sentences imposed in 3 cases similar to yours:

- (a) ***R v Pouono*** (CR285/2020) where the accused was convicted after a not guilty trial for possessing 0.08 gram of methamphetamine and 0.38

gram of cannabis. He was a repeated drug offender and he was in breach of the condition of the suspension of his previous sentence when he committed these offences. The starting point of 6 months was increased to 8 months because of that breach and he was sentenced to 8 months imprisonment for the methamphetamine offence and to 1 month imprisonment for the cannabis offence, both sentences to be concurrent.

- (b) **R v Satini** (CR7/2021) where the accused pleaded guilty to possessing 0.93 gram of cannabis. He was a repeat drug offender. He was sentenced to 1 month imprisonment.
- (c) **R v Vehikite** (CR4/2021) where the accused pleaded guilty to possessing 0.04 gram of methamphetamine. He was a first offender. The Court had a starting point of 12 months and deducted 6 months for the guilty plea and on account of being a first offender, and suspended the whole of the remaining 6 months sentence on conditions including serving 40 hours community work.

[13] Counsel agrees with the probation officer's view that you be ordered to serve community work.

[14] She says that the starting point for you for the methamphetamine is 6 months imprisonment as was in the **Pouono Case** and that it be increased by 2 months because of the aggravating factors she pointed out and because cannabis was also found in your possession. From that total of 8 months is to be deducted 2 months for your previous good record, as you are a first offender.

[15] She therefore recommends that your sentence be 6 months imprisonment for the methamphetamine and 1 month for the cannabis, both to be concurrent.

[16] As to suspension of that or of part of that sentence, she says that in accordance with the guidelines laid down in **Mo'unga Case** [1998] Tonga LR 157, you are entitled to full suspension of that sentence, but with conditions that you:

- (a) are not to commit an offence punishable by imprisonment;

- (b) be placed on probation;
- (c) undertake a course on drug rehabilitation; and
- (d) to carry out 40 hours community service.

Your submissions

- [17] You wrote your own submissions and you have told me that you are truly sorry and repentant for what you have done and that you have now learnt your lesson from the error you have made, and that you have abandoned the way you have lived. You say you have returned home to your parents and have disassociated yourself from the friends you had and who had led you astray. You say you have sought employment and that you have found a job with Ancient Tonga and have denounced your former life.
- [18] You ask that you be given the chance to continue with that work and job you now have, because you say it has helped not only you but also your parents with the income you now make.
- [19] You told me in Court that you work 8 hours a day and 5 days a week and that you earn \$250 per week at your job at Ancient Tonga. You told me that your town allotment was registered in your name in 2016 but the house was built on it by your father in 1982 or so, and that it had been gifted to you by your father. You told me that no one is living in it for one month now.
- [20] You told me that you now live at your parents' house together with your parents and your father's mother and your sister and her son, and that you and your sister are both working to support all of you.

Consideration

- [21] There are several things I have to consider in sentencing you. First, and foremost, is that drugs, illicit drugs, is destructive to the country and that the law has made the offence of possessing any illicit drug to be punishable with imprisonment or with a substantial fine or both. You have seen yourself suffer as result of the use of illicit drug. You have found that you must have it and that you must pay a lot of money to have it because you cannot live without it. It rules you. You must have it and when you have no money to buy it, you

agree to sell it to others who have money so that you can have some to use yourself.

- [22] And when you use it on yourself, you become useless. You cannot work to earn any money. You cannot support yourself and you cannot support a wife, let alone children. You become useless to society because you cannot work and you become destructive to society because you sell the drugs to others to become useless themselves as well.
- [23] If there are 10 people who are like you, or a 100 or a 1000, imagine how much destruction is being caused to the country? Each of those 10 people, or 100 people, or 1000 people, may be supplying 10 other people. There would be tens of thousands of people in the country doing no work because they become useless to work. The families will suffer, the whole country will suffer.
- [24] I must consider that when I consider your sentence.
- [25] Second, I must consider your personal circumstances and to see if there is any aspect of it that may require special consideration.
- [26] Third, I must consider the circumstances of your offence and to see if there are any aggravating or mitigating features about it.
- [27] Then lastly, I have to consider whether there is any indication that you may be likely to rehabilitate yourself and to become a law abiding person.

Imprisonment

- [28] In considering the appropriate sentence for you, I must have regard to the sentences which have been imposed in other cases which are similar to your case. I am sure you would feel that you have been unjustly dealt with if I was to sentence you to a longer term of imprisonment than others who have already been sentenced for a shorter term of imprisonment for having possession of a similar amount of the same illicit drug.
- [29] I have had regard to the sentences in the case to which Crown counsel has referred, and to her recommendation in light of those sentences, and I feel that I am more inclined to follow the sentence imposed in the case of **R v**

Pouono (CR285/2020) where the accused pleaded not guilty but was convicted of possessing 0.08 gram of methamphetamine and 0.38 gram of cannabis. His appropriate sentence for the head sentence of possessing 0.38 gram of methamphetamine was 6 months, and it was only increased to 8 months because he breached the suspension of his previous sentence. He was sentenced to 1 month for the possession of cannabis, which sentence was to be concurrent to the methamphetamine sentence so that he served only 8 months.

[30] Now, in your case, you did not breach any condition of a prior sentence, and so your sentence should be only 6 months imprisonment, as was in **Pouono's Case**, but for his breach of suspension, but which was to be concurrent with the methamphetamine sentence.

Suspension

[31] As to suspension of that, or part of that, sentence, I agree with Crown counsel that you do qualify under the guidelines laid down in the **Mo'unga Case** for suspension of that sentence. I accept the probation officer's view that you have shown initiative and have rehabilitated yourself, firstly by finding and keeping a job and secondly by moving back and living with your parents, not only to receive their guidance and teachings, but also to help them financially with your weekly wages from your job. That is a responsible and mature act on your part.

[32] I am also impressed by your exemplary conduct and conscientious effort at your job. Your employer is most thankful for your invaluable contribution of your knowledge and experience in accounting to the business. I believe that you have shown that you would take and make use of the opportunity offered by a suspension of your sentence to rehabilitate yourself.

[33] I also agree with the probation officer and with Crown Counsel that you would benefit and be properly assisted by the course of the Salvation Army on drug awareness. As to community service, I do not think that it is necessary in your case. I consider that your service to your parents, after work each day and during the weekends is a sufficient service to the community. I however

consider that you be watched by the probation officer and that you do not live elsewhere unless by leave of the Court.

The sentence

[34] Accordingly, after considering the several matters I have stated and for the foregoing reasons, I sentence you as follows:

- (a) for the offence of possessing 0.04 gram of methamphetamine, you are sentenced to 6 months imprisonment;
- (b) for the offence of possessing 0.66 gram of cannabis, you are sentenced to 1 month imprisonment.
- (c) both sentences in (a) and (b) are to be concurrent and are suspended for a period of 2 years from today upon the condition that –
 - (i) you attend and complete the Salvation Army course on drug awareness for which purpose you are to attend at the office of the probation service within 24 hours to arrange for your attendance at the Salvation Army;
 - (ii) you must live with your parents unless leave of the Court is granted to live elsewhere.
 - (iii) you are not to commit an offence punishable by imprisonment during the period of suspension of your sentence.

[35] I order that the drugs in respect of these offences and paraphernalia seized together with them be destroyed by the police forthwith.



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

Niu J

J U D G E

Nuku'alofa: 14 July 2021