

IN THE SUPREME COURT OF TONGA

CRIMINAL JURISDICTION

NUKU'ALOFA REGISTRY

CR 245 of 2020

REX

-v-

SOSAIA FIFITA

BEFORE HON. JUSTICE NIU

Counsel : Mr. 'I. Finau for the Crown.
Mr. S. Tu'utafaiva for the accused.

Convicted : 23 June 2021.

Report : by Probation Officer on 21 July 2021.

Submissions : by Mr. Finau on 28 July 2021.
by Mr. Tu'utafaiva on 18 August 2021.

Sentencing : 24 August 2021.

SENTENCING

Offences

- [1] Sosaia Fifita, you have committed 2 offences on 14 November 2019 at Tofoa, namely, you wilfully and without lawful excuse possessed 2.36 grams of methamphetamine and 3.14 grams of cannabis contrary to S.4 (a) (iii) and S.4 (a) (i) respectively of the Illicit Drugs Control Act.
- [2] The police received information at about 9:00 pm that you were driving around Nuku'alofa selling illicit drugs and that you were parked at the east parking

area of Vaiola Hospital at Tofoa. The police came there straight away and found you there and grabbed you from behind while you were standing beside your vehicle talking to another person who was also standing beside his vehicle next to yours. Your telephone and a small glass or plastic capped bottle fell from you when you were grabbed and put on the ground. The bottle contained 4 packs of methamphetamine which was later weighed without the cellophane packs and they came to 2.36 grams. You told the police officer that you had cannabis in your vehicle and the police found it inside a bag you had in the vehicle. The cannabis was later weighed and it came to 3.14 grams.

[3] There were also cash found as follows:

(a)	in your trouser's pocket	\$122.00
(b)	in your bag in the vehicle	150.00
(c)	in the driver's door hollow	100.00
(d)	in the driver's sun visor	434.00
(e)	in a box below the dashboard	<u>190.00</u>
	Total	<u>\$996.00</u>

[4] There were also these things found between the driver's seat and the front passenger's seat:

- (a) 1 constant weighing scale.
- (b) 1 black bag containing 1 constant weighing scale and empty plastic packs, 1 small bag containing empty packs and 1 test tube adapted for smoking methamphetamine.

I refer to all those as the paraphernalia.

[5] You pleaded not guilty to having committed those 2 offences but I found you guilty of those offences after I heard the evidence of the police officers. You chose not to give evidence or call any witness.

Report

- [6] The probation officer has spoken with you and your wife and has written a report on what he has found out. He says that you are 33 years old, you are married and you have 4 children who are still in primary school and that you work as a mechanic fixing motor vehicles and repair electrical wiring of vehicles.
- [7] He says that you told him that you do not dispute or deny anything about the offences you committed. You told him that you had started off using the methamphetamine but that you went on to selling it as well.
- [8] He says that you attended Tonga College up to form 5 and left school and worked to help your parents maintain and educate your sisters, you being the only male and eldest child in a family of 5 children.
- [9] You told the officer that you have quit using and selling the drugs since you were arrested for this offence, but it may appear that that may not be correct because you and your wife have been arrested lately for possessing utensils for using drugs, and that that matter is still in the Magistrate's Court.
- [10] The officer made no recommendation about your sentence but says that in addition to any sentence, attendance and completion of the Salvation Army course on drug awareness should help you overcome your drug problem.

No previous conviction

- [11] The probation officer, and Crown counsel, both say that you have no previous conviction.

Crown submissions

- [12] Crown counsel says that your only mitigating factor is that this is your first offence. Against that, he says that there are 5:
- (a) You were found with a substantial amount of methamphetamine, namely, 2.36 grams.
 - (b) You were also found with 3.14 grams of cannabis.

- (c) You were found with a large amount of cash which indicated that you selling drugs.
 - (d) You were found in a public area at the hospital, and
 - (e) Drugs is a big issue in Tonga.
- [13] He says that the laws concerning illicit drugs provide very substantial fines and imprisonment.
- [14] He refers to the case of ***R v Hufanga*** (CR211/2020) where the accused in that case pleaded guilty to possessing 2.13 grams of methamphetamine and 8.16 grams of cannabis. His starting point for the methamphetamine offence of 2 years 6 months was reduced by 30% on account of his guilty plea and having no previous conviction, and was sentenced to 1 year 9 months imprisonment. For the cannabis offence, he was sentenced to 3 months imprisonment, both sentences to be concurrent and that the last 9 months of the 21 months were to be suspended on conditions.
- [15] In accordance with that case, counsel submits that in your case, your starting point should be 2 years 6 months for the methamphetamine and that 6 months be deducted on account of having no previous conviction. As for the cannabis, a starting point of 3 months be applied and that 2 months be deducted on account of having no previous conviction, leaving a sentence of 1 month. He says that both sentences be concurrent.
- [16] As to suspension of the final sentence of 2 years or part of it, he suggests that the final 9 months be suspended, the difference between your case and ***Hufanga's case*** being that Hufanga pleaded guilty and you did not.
- [17] He asks for an order that the drugs and paraphernalia found be destroyed and that the cash found be forfeited to the Crown.

Your submissions

- [18] Your counsel was to have filed submissions on your behalf but he did not. He attended in Court on 18 August 2021 with you and provided the information about the recent arrest of yourself and your wife for possessing utensils,

namely straws, and about your living circumstances after your home was demolished by fire recently.

Consideration

- [19] The case to which Crown counsel has referred and the sentence imposed in it are consistent with sentences imposed in cases of similar amounts of illicit drugs and circumstances. I agree with the sentence proposed by him, except that the deduction of 2 months from 3 months starting point for the cannabis offence on account of having no previous conviction may be excessive. I would think that a deduction of only 1 month would be sufficient, but it really makes little difference because it is to be served concurrently with the methamphetamine sentence which is for much longer than either 1 month or 2 months for the cannabis offence.
- [20] I have also considered your personal circumstances, that is, your wife and your 4 young children, but you and your wife were well aware of your circumstances when you committed these offences. You had already been committing offences concerning illicit drugs prior to your arrest on this day at the parking area at Vaiola Hospital. You told the probation officer that you had been using drugs yourself and that you then took on and carried on the sale and supply of illicit drugs. Your wife would have known about it. She should have stood up to you and stopped you from doing it, but she did not. The probation officer says that your wife told him that you and her had talked fully about this matter and that you would quit drugs and look to making an honest living for yourself and your family without illicit drugs.
- [21] I agree with the probation officer that you would benefit from attending and completing the drug awareness course of the Salvation Army, and I also think that it would be wise that you be on probation as well in order that the probation officer may make direction and to supervise where you live and what you do when you are on probation, to ensure that you do not re-offend or resume taking drugs.

Sentence

- [22] I therefore sentence you as follows:

- (a) for the offence of possessing 2.36 grams of methamphetamine, you are sentenced to 2 years imprisonment;
- (b) for the offence of possessing 3.14 grams of cannabis, you are sentenced to 1 months imprisonment;
- (c) both sentences in (a) and (b) above are to be served concurrently, and that the last 9 months of your 2 year imprisonment sentence shall be suspended for a period of 2 years from the date on which you are released from prison, on the following conditions:
 - (i) that you be placed on probation and that you shall report to the office of the probation service within 48 hours of your release from prison;
 - (ii) that you attend and complete the drug awareness course of the Salvation Army during the period of suspension.
 - (iii) that you live and work where directed by the probation officer; and
 - (iv) that you do not commit an offence punishable by imprisonment within the period of suspension.

Orders

- [23] I order that the illicit drugs and the paraphernalia seized by the police in connection with this case be destroyed by the police forthwith, in accordance with S.32 (3) of the Illicit Drugs Control Act.
- [24] I also order that the cash of \$996.00 which was found and seized by the police in connection with this case is forfeited to the Crown in pursuance of the provisions of S.33 (3) of the Illicit Drugs Control Act.

 
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J U D G E

Nuku'alofa: 24 August 2021