

*Sua + ALU.*

**IN THE SUPREME COURT OF TONGA**

**CRIMINAL JURISDICTION**

**NUKU'ALOFA REGISTRY**

**CR 307 & 308 of 2020**

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**R E X        -V-    'ISITOLO SAKOPO                    (CR307/2020)**

**REX            -V-    KANITELI GUTTENBEIL                    (CR308/2020)**

**BEFORE HON. JUSTICE NIU**

**Counsel        :        Ms. 'E. Lui for the Crown.  
                              Both accused for themselves.**

**Plea             :        Guilty by Guttenbeil on 31 May 2021 and by  
                              Sakopo on 2 June 2021.**

**Reports         :        by Probation Officer, 'Ema To'ia, on 29 June 2021.**

**Submissions:    filed by Ms. Lui on 21 July 2021.**

**:        by Sakopo in Court on 4 August 2021, and by  
                              Guttenbeil in Court on 5 August 2021.**

**Sentencing     :        25 August 2021.**

**SENTENCING**

**Offence**

[1] You, 'Isitolo Sakopo and Kaniteli Guttenbeil, have jointly committed 2 offences on 30 July 2020 at Nuku'alofa, one offence being the possessing of 0.13 gram of methamphetamine, and the other being the possessing of 1.13 grams of methamphetamine. You, Kaniteli, admitted those 2 offences and you pleaded guilty to having committed them on 31 May 2021. You, 'Isitolo, admitted them and you pleaded guilty to them on 2 June 2021.

*24 AUG 2021*  
*[Signature]*

- [2] What happened was that the police received information on that day, 30 July 2020, that you, 'Isitolo, were driving around Vuna Road selling illicit drugs, and that you were hiding the drugs in your vehicle by gluing a magnet to the container of drug packs and sticking the magnet on to a metal part of the vehicle that was not easy to detect.
- [3] The police straight away looked for and found the vehicle with you, 'Isitolo, driving it and Kaniteli sitting in the front passenger seat, near the American Wharf. They found a small pouch on the driver's seat under which there were 2 packs of methamphetamine. They found empty packs and earbuds inside the pouch. You, 'Isitolo, told the police that the pouch was yours, and that you, Kaniteli, told them that the methamphetamine belonged to you.
- [4] The police also found a bag in the boot of the car and that you, 'Isitolo, told them that it belonged to you. It contained empty packs as well.
- [5] The police dog was used and it indicated something underneath the front passenger seat and the police found a pipe with a magnet glued to it and stuck to a metal part of the underside of the passenger seat. There were 5 packs of methamphetamine packed into the pipe.
- [6] The methamphetamine which were in the 2 packs found on the driver's seat weighed 0.13 gram and the methamphetamine which were in the 5 packs found under the front passenger seat weighed 1.13 grams.

#### **Previous conviction**

- [7] You, Kaniteli, have a conviction on 19 November 2011 for drunkenness for which you were fined \$400.

#### **Reports – 'Isitolo Sakopo**

- [8] The probation officer, 'Ema To'ia, prepared a report on you, 'Isitolo. She says that you are 30 years old, still single, and still living with your parents. Your mother told her that you were the smartest of

her ten children and that you were on a scholarship and that you finished form 7 at Tonga College and that you attended Tupou Tertiary Institute and obtained a Diploma in Administration in 2008.

- [9] She, 'Ema, says that you told her that you joined the police force but that you were suspended and she did not explain or you did not say why except to say that you were not guilty of any offence. She said that she asked the human resources officer of the police force and that that officer told her that it was up to Police Board to decide whether you are fit to continue to be a police officer.
- [10] 'Ema says that you told her that you did not know that Kaniteli had illicit drugs in the vehicle until the police found them when they were stopped by the wharf, where you said you had stopped so that he, Kaniteli, could use a drug. She says that you maintain that you are blameless of the two offences, but that your mother and father had counselled you many times to keep away from the wrong crowds but that you took no notice. She says that they told her that they love you but they want you to learn from your mistake even if it meant imprisonment.
- [11] She says that the persons working in the police force should be enforcing the laws and not breaking them instead especially the drug laws, because of the prevalence of the problems with illicit drugs in our society.
- [12] She recommends that you be given only a partial suspension of sentence and to undertake the drug course of the Salvation Army.

### **Kaniteli Guttenbeil**

- [13] 'Ema also did a report on you, Kaniteli. She says you are 32 years old and that you are married and that you have 4 children, aged 8 to 8 months. She says you finished form 6 at Liahona High School and that you took one-year course in electricity at Fokololo 'oe Hau Institute, and that you are currently unemployed and that you work from time to time for an electrical contractor for \$100 per job.

[14] She says that you acknowledge that the summary of facts provided by the Crown as to what happened was correct.

[15] She says that your wife told her that when you took drugs, you would beat her, and that she and the children had left you because of that. Your wife told her that if you stopped taking drugs, she would return with the children to you.

[16] The officer therefore recommends that you, Kaniteli, be given a full suspension of sentence but that you serve a community service and to take the drug course of the Salvation Army.

### **Crown submissions**

[17] Crown counsel, Ms. Lui, has made submissions and refers to 7 cases and the amounts of drugs and type of drugs involved, the pleas made and the presence of previous convictions of the respective accused person and the sentences which were imposed on those persons. These were the cases of **Mangisi** (CR10/2018), **Holani** (CR65/2020), **'Ali** (CR196/2020), **Teulilo** (CR266/2020), **Latu** (CR66/2019) **Pangai** (CR32/2021) and **Afu** (CR177/2020).

[18] In accordance with those cases and the sentences imposed in them, she submits that the sentence to be imposed on both of you be as follows:

That you have a starting point of 18 months imprisonment from which is to be deducted 4 months for your guilty pleas, your remorse and having no previous conviction, leaving 14 months imprisonment, the final 6 months of which are to be suspended on conditions that

- (a) you are not to commit any offence punishable by imprisonment,
- (b) you be placed on probation,
- (c) you report to the probation office within 48 hours of your release from prison, and
- (d) you complete the Drug Rehabilitation course of the Salvation Army.

[19] She also asks for an order that the drugs and paraphernalia found with you be destroyed.

### **Your submissions**

[20] You, **'Isitolo**, made your submissions in Court on 4 August 2021. You apologised for breaching the law and you asked for the mercy of the Court. You told me that you now want to live and care for your family, but that you would accept the penalty for what you have done. You promised that you would not re-offend and that you would up-hold the law from now on. You asked for forgiveness.

[21] I asked you what you thought of the Crown's recommendation as for your sentence and you asked that you be given a full rather than a partial suspension of your sentence. You said that you are currently suspended from your work as a police officer and that your sentence for this offences would affect that suspension.

[22] You told me that you currently work at a mechanic workshop at Puke for 3 weeks now and that you get about \$150 per week. You said that you were married in 2015 and have 1 child and you live with your wife and child at Hauloto, together with your parents and a brother and a sister. That conflicts with what you told the probation officer, namely, that you are still single.

[23] You, **Kaniteli**, made your submissions in Court on 5 August 2021, and you asked for the mercy of the Court. As for the Crown's recommendation, you asked that you be given a full rather than partial suspension, on conditions which would include community service.

[24] You told me that you presently work wiring new houses for a building contractor and that you earn \$200 - \$300 per week. You said you had started taking drugs in 2018 and that when you were caught for the present offences in July 2020 you tried to stop and that you finally stopped it in November 2020.

[25] You said that the car which you used that day you were caught belonged to a girl and which you and 'Isitolo were able to borrow.

You said that the drug packs found in the car were yours and that it was you who had hidden the drugs in the pipe with the magnet stuck under the front passenger seat and that you and 'Isitolo were intending to sell it, and that 'Isitolo knew of the drugs and where they were.

### **Consideration**

[26] You have both pleaded guilty to these 2 offences. That means you both knowingly and without lawful justification possessed these amounts of methamphetamine. That means that you knew that it was against the law to have them in your possession and control. That means that you knowingly broke the law, and that you knew that that law provides heavy penalties for breach of that law. There can therefore be no excuse for what you have done.

[27] And what is worse is that you, 'Isitolo, were and are a police officer, and you, Kaniteli, would have known that. You, 'Isitolo, a well-educated person, holding the position of trust and respect of a police officer who should be upholding the law, should have known better than to break the law you were supposed to uphold. You, Kaniteli, supported 'Isitolo, a police officer, to break the law, in order that he would not stop and arrest you for breaking the law yourself.

[28] I consider that that aspect of your offence was not considered by the Crown in its submissions and it was not a factor that was present in any of the 7 cases referred to in its submissions, and I accept that it did not consider that in its consideration and recommendation. I must consider and take it into account.

[29] I consider that an appropriate starting point for your offences is 30 months imprisonment rather than 18 months as the Crown has recommended. That properly reflects the seriousness of your offences because of the involvement of 'Isitolo as a police officer. From that I consider that 8 months be deducted on account of your guilty pleas and for having no previous drug conviction, rather than only 4 months for the same as the Crown recommends, leaving a sentence of 22 months imprisonment.

[30] And because of your young age and of likelihood of rehabilitation, I agree that you are entitled to partial suspension of that sentence. I consider that the last 10 months of that sentence be suspended for 2 years on conditions.

### **Sentences**

[31] Accordingly, I sentence you as follows:

'Isitolo Sakopo and Kaniteli Guttenbeil, you are each sentenced for possessing 0.13 gram of methamphetamine under count 1 to 3 months imprisonment, and for possessing 1.13 grams of methamphetamine under count 2 to 1 year 10 months imprisonment, both sentences to be concurrent, and that the last 10 months be suspended for 2 years from the date you are released from prison upon the following conditions:

- (a) you both be on probation;
- (b) you shall both report to the probation service office within 48 hours after your release from prison;
- (c) you will both live and work where directed by the probation office;
- (d) you will both attend and complete the drug awareness course of the Salvation Army; and
- (e) you do not commit any offence punishable by imprisonment within the period of suspension.

[32] I order that the drugs and items seized by the police in respect of these offences be destroyed by the police forthwith.



*[Handwritten Signature]*  
Niu J

**J U D G E**

**NUKU'ALOFA: 25 August 2021.**