

Sean

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

CR 279 of 2020

REX

-v-

Sosefo aka Sione POTEKI

SENTENCING REMARKS

BEFORE : THE HONOURABLE COOPER J

Counsel : ✓ Mr. F. Samani for the Prosecution

Defendant appear in person

Date of sentence : 17 August 2021

1. On 30th October 2020, the police, acting on information drove to Hu'atolitoli area in Vaini deployed in two unmarked police vehicles.
2. On arriving at the Hu'atolitoli area they found the defendant driving towards them in an Isuzu Bighorn.
3. Mr. Poteki attempted to avoid the police who were blocking the road so as to detain him, reversing and hitting a police car, driving at officer Vimahi who was standing in the road.
4. That officer shot out a tyre of the defendant's vehicle in an attempt to stop his getting away.
5. The defendant continued to drive, turning off the road and into a plantation where he was eventually detained when his vehicle could get no further.

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6. He was arrested and searched.
7. In his pocket were found 2 x .22 ammunition
8. On the ground, where the defendant had driven they received a .22 rifle loaded with 7 rounds, including one in the chamber.
9. In due course the gun was examined by the armourer and found to be in full working order.
10. Also on the ground, following the route the defendant had driven was discovered 3 packets of suspected methamphetamine.
11. A search of the vehicle discovered :
 - a) 1 pack of suspected methamphetamine found in a box close to the steering wheel;
 - b) 1 x .22 ammunition found between the front passenger's seat and the driver's seat; and
 - c) 2 x weighing scales, empty shell casings and empty packs in the compartment box between the driver's seat and the front passenger's seat.
12. This led to a search of his home address. Cannabis leaves were recovered from the pocket of a tupenu.
13. Further cannabis leaves from a bag in the house.
 - a) In total 2.73 g methamphetamine was found in and about the car.
 - b) 6 g of cannabis.
 - c) A quantity of empty snap bags/dealer bags of the sort that the methamphetamine was kept in by the defendant.
 - d) Two electronic scales.
 - e) \$ 70
 - f) One .22 rifle

g) 53 rounds of .22 ammunition.

14. The defendant appeared before me for trial and pleaded guilty to possession of the above drugs, gun and ammunition as well as failing to comply with the lawful request of Officer Vaka to stop his car.
15. In respect of the methamphetamine, it is quite clear that this was possession for the purpose of supply. That is to be inferred from the scales and spare dealer bags that the defendant was driving around with as well as the drugs.
16. It is also to be observed that he was armed with a loaded rifle while going about with possession of drugs for the purpose of dealing them.
17. I have read and taken into account the pre-sentence report and all the references and considered all possible mitigating factors.
18. When considering the possession of the drugs I have considered these cases :
19. *Rex v Siua Palanite Hufanga* (Unreported, Supreme Court, CR 211/2020, 28 May 2021, Whitten LCJ)
 - (a) The Accused pleaded guilty to one count of possession of 2.13grams of methamphetamine and one count of possession of 8.16grams of cannabis. The offending occurred in March 2020.
 - (b) The meth charge was taken as the head count. A starting point of 2 ½ years imprisonment was imposed.
 - (c) A starting point of 4 months imprisonment was imposed for the cannabis charge.
 - (d) 30% deduction from the starting points by way of mitigation for the Accused's guilty plea and because this was his first drug offending.
 - (e) A resulting sentence of 21 months for the meth charge, and 3 months for the cannabis charge to be served concurrently with the meth charge.
 - (f) In paragraph [21], Whitten LCJ stated "*The opportunity and support offered by a period of supervision, support and education after the Defendant's release from prison is likely to assist in his rehabilitation should he choose that course for his*

life. To assist him with that choice, I will also order a significant suspension period”

- (g) The final 9 months of the head sentence, are to be suspended for 2 years on conditions.

20. ***Rex v Kelikupa Maile*** (Unreported, Supreme Court, CR 302/2020, 13 May 2021, Whitten LCJ)

- (a) The Accused pleaded guilty to one count of 0.5grams of methamphetamine (count 1), 2.5grams of methamphetamine (count 2) and a total of 51.53grams of cannabis (count 3). The offending occurred on 3 May 2019.
- (b) Count 2 was taken as the head sentence. A starting point of 3 years imprisonment was initially set. The Court added on 6 months to the 3 years starting point as aggravation on the basis that the Accused committed the offence whilst on bail.
- (c) For the Accused’s guilty plea and the Crown’s failure to provide an accurate criminal record of the Accused, the Court took this offending as the Accused’s first drug offending, and the starting point was reduced by 12 months imprisonment resulting in a sentence of 30 months imprisonment.
- (d) For Count 1, the Accused is sentenced to 9 months imprisonment. For Count 3, the Accused is sentenced to 18 months imprisonment. Both sentences are to be served concurrently with Count 2.
- (e) The final 12 months of the 30 months imprisonment is suspended for 2 years on conditions.

21. ***Rex v Viliami Paletu’a*** (Unreported, Supreme Court, CR 27/21, 23 April 2021, Whitten LCJ)

- (a) The Accused pleaded guilty to possession of 3.16grams of methamphetamine. The offending occurred on 29 September 2020.
- (b) A starting point of 3 years and 3 months was set by the Court.
- (c) By way of mitigation, 13 months was deducted from the starting point, resulting in a sentence of 26 months imprisonment.
- (d) The final 12 months of the 26 months imprisonment is suspended for 2 years on

conditions.

22. Count 1 is to be the head sentence. Looking carefully at the comparable sentences a starting point of 3 years' imprisonment is appropriate in this case.
23. But this is aggravated by the presence of a loaded firearm which was carried in the defendant's vehicle. Given the spare snap/dealer bags and the scales, it can safely be inferred that Mr. Poteki was out and conducting his business dealing these drugs.
24. The presence of the firearm in this context is a serious aggravating feature.
25. Accordingly the starting point I increase to 4 years' imprisonment.
26. Because of his late guilty plea, at the day of trial, I discount his sentence by 10%; I reduce it by 5 months.
27. Accordingly on count 1 pass a sentence of 43 months' imprisonment (3 years and 7 months.)
28. Count 2; 1 month concurrent.
29. Count 3; 18 months concurrent
30. Count 4; 9 months concurrent.
31. Count 5; 9 months concurrent.
32. I order the forfeiture and destruction of the drugs and all paraphernalia as well as the forfeiture of the \$70.
33. Because he does have a previous conviction, but for a firearms offence, which is not the head sentence, I suspend the final 3 months for a period of 2 years on condition that :
 - i. On release report to his probation officer in 48 hours of release.
 - ii. Commits no offences punishable by imprisonment
 - iii. Satisfactorily completes drug offender course.

34. Total sentence 43 months' imprisonment; the final 3 months suspended for 2 years on the above conditions.

NUKU'ALOFA
17 August 2021

