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

CR 134 of 2021

REX

-v-

Latu MATA'U

SENTENCING REMARKS

BEFORE : THE HONOURABLE COOPER J

Counsel : Mr. F. Samani for the Prosecution

Defendant in person

Date of sentencing : 16 September 2021

1. On the 1st April 2021 Mr. Mata'u was drinking at home with friends including Mr. Viliami Hafoka, when around 0100 hrs an argument developed.
2. Mr. Mata'u accused Mr. Hafoka of having taken his mobile phone.
3. Mr. Mata'u took a metal pipe and struck at Mr. Hafoka. First he struck towards the victim's head but it was not an accurate strike and lacerated Mr. Hafoka ear.
4. Mr. Mata'u tried again and Mr. Hafoka blocked the strike to his head by using his arms to shield him. On contact the cracking noise caused by the impact could be clearly heard.
5. In shielding himself, Mr Hafoka ended up with having both his arms broken.
6. He needed the help of another man at the scene, Viliami Fehoko, to stand to go to hospital. At the Viola hospital he was treated. His ear stitched and his arms were found to each have bilateral fractures that required him to wear casts on both.

Comparable sentences

7. *R v Talau* CR 31/2021, an offence of serious causing bodily harm, punching that caused a cut to the right side of the head and fractured tooth. Justice Niu considered a starting point of 4 years was merited.
8. *R v Lavelua* 2018 CR 105/2018, an offence of serious causing bodily harm. That case involved a sustained attack to the face of the victim, no weapon was used as was here, but there the victim lost a tooth and had serious bruising inflicted to him.
9. Chief Justice Paulsen considered that a starting point of 2 ½ years' imprisonment was appropriate.
10. *R v Pouono* 60/2021 an offence of serious causing bodily harm; a hammer attack to the head of the victim as he slept that caused no lasting injuries but made his black out. I imposed a sentence where I took the starting point to be 3 years.
11. Significant aggravating factors in this case are :
 - i. Use of a weapon;
 - ii. The element of premeditation in arming himself;
 - iii. That the intention was to strike the victim's head;
 - iv. It was a repeated assault;
 - v. That the intention was to cause more serious injury than that inflicted;
 - vi. The victim was not armed, and
 - vii. The duration of treatment for his injuries.
 - viii. The extent of the injuries.
12. It is of particular concern that the victim has lost the use of one of his fingers in his left hand because of this attack.
13. This case should have been reviewed with that in mind and a charge of causing grievous bodily harm should have been considered.
14. The fact that another charge should have been considered does not effect my sentence. But the lasting nature of the injury inflicted plainly does.

15. The maximum sentence for an offence under this section is one of 5 years' imprisonment.
16. Count 2 is to be the head sentence.
17. This attack was at the very top end of the scale for an offence of serious causing bodily injury.
18. In considering those comparable sentences as well as the aggravating factors, and especially bearing in mind item (v) above; the force that was used and that the intention was the strike the victim's head with the pole, from this it can be inferred that the defendant intended to cause grievous bodily harm to the victim, I conclude that the correct starting point is 4 years on count. That is 48 months.
19. Count 1, a sentence of 1 year, concurrent.
20. Because of his early guilty plea I deduct 30 %, or 14 months. That gives a sentence of 34 months.

Suspension

21. On receipt of the probation report, the character references and a medical report I adjourned the case on 14th September, when it had been due for sentence to give careful consideration to those documents.
22. The defendant had been of good character and the references speak of his positive good character. The role he has played in his community and church.
23. This offence is entirely out of character. Since, he has made his peace with the victim and sought to offer him care and assistance during his time convalescing. Mr. Hafoka has had positive things to say about this and the character of the defendant, in the victim impact report.
24. There is a further consideration in all of this. Mr. Mata'u's mother is 75 years old and suffered a stroke on the 28th August 2021 for which she was hospitalised.
25. He is her sole carer and works as a farmer to provide for her as well as himself.

26. All Mr. Mata'u siblings live abroad and there is no family member to care for her other than himself.
27. I have carefully considered *R v Mo'unga* [1988] 15/ 97 TLR 154; 120-160, also *R v Minsale* Cr App R 13/99.
28. The pre sentence report makes the point that Mr. Mata'u is of a low risk of reoffending.
29. When I consider this, against his previous good character and that there was provocation to make the defendant behave that way; when he feared he had lost family pictures of great sentimental value when his phone was taken.
30. When I consider the positive role he has played in his village and the lives of others and that he is the sole carer of his elderly mother who depends upon him and has been of frail health.
31. When I put all these factors together I am driven to conclude that a wholly exception course can be taken in this case.
32. Violence against anyone is to be deplored and this offence is so serious that a term of imprisonment is called for to mark this.
33. But this term of imprisonment I shall suspend.
34. Mr. Mata'u will be sentenced to 34 months' imprisonment, suspended for 3 years on the following conditions.
 - i. He be put on probation;
 - ii. During that time he commit no offence punishable by imprisonment;
 - iii. He perform 100 hours community service, and
 - iv. Attends and completes alcohol awareness program.
35. Any breach of this order will be reserved to myself.

NUKU'ALOFA
16 September 2021

