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

CR 60 of 2021

REX

-v-

Sione POUONO

SENTENCING REMARKS

BEFORE : THE HONOURABLE COOPER J

Counsel : Mr. 'I. Finau for the Prosecution
Defendant in person

Date of sentence : 31 August 2021

1. Mr. Pouono pleaded guilty to a single count of serious causing bodily harm, contrary to section 107 (1) (2) (c) Criminal Offences Act. . It relates to the events of 8th November 2020.
2. On that day at approximately 2300 hrs the defendant was hitchhiking from Lapaha when the complainant, Mr. Viliami 'Esei Moala, drove past and gave him a lift agreeing to drop Mr. Pouono at the tax allotment that Mr. Moala's family owned.
3. They made their way there and an arrangement was made for Mr. Pouono's parents to come and fetch him.
4. When the defendant's parents arrived it was so close to the midnight curfew they all slept in their respective vehicles, Mr. Pouono in Viliami 'Esei Moala's with Mr. Moala.
5. The next morning, inexplicably, the defendant beat sleeping Mr. Viliami Moala on the head with a hammer, knocking him out then striking him again when he regained consciousness, despite the victim begging for mercy.

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6. The defendant then refused Mr. Moala's entreaties to take him to hospital and threatened to throw Mr. Moala in the sea.
7. Mr. Moala escaped and ran to Mr. Pouono's parent's car and they took him to hospital.
8. There he was examined and found to have multiple lacerations to the back of his neck but no fractures.
9. The defendant was later arrested at the allotment and the hammer recovered.
10. He declined to give an interview with police.
11. A pre sentence report has been completed and I have read that and taken everything into considerations.
12. Some of the essential points are that the victim has made a full recovery; that Mr. Pouono himself had a very unstable start in life being introduced to class A drugs in his home environment and this led to his behaviour deteriorating into a cycle of criminality.
13. He faced proceedings for methamphetamine and cannabis possession 285/2020, was granted bail and four days later, on 7th November 2020 got into a drunken fight whereby he armed himself, attacked his victim to his face with that knife cutting his nose and then severing the victim's right index finger.
14. It is to be noted that the instant case relates to an attack the very next day, the 8th November 2020.
15. Again it was premeditated; a weapon was used; the victim's head was targeted; and in this case the victim was defenceless as he was asleep; Mr. Pouono was on police bail at the time.
16. The defendant would not explain to the Probation officer why he had attacked the victim and prevaricated when asked to justify his actions.
17. When I turn to consider my sentence I take into account all the factors I have set out and the whole of the pre-sentence report.

18. I take into account that Mr. Pouono did enter a guilty plea, that it came on the morning of trial; but that he did not have the benefit of legal representation.
19. Mon 21st June this year Lord Chief Justice Whitten QC sentenced Mr. Pouono in relation to the drug case CR 285/2020¹ as well as two counts of grievous bodily harm contrary to section 106 (1), 2 (b) and 2 (c) Criminal Offences Act, CR 59/2021, in respect of the knife attack.
20. Mr. Pouono was sentenced to 4 ½ years' imprisonment for the knife attack (a total of 5 years with the his sentence for the drug offences consecutive to CR 59/2021, 3 years to be served and the last 2 suspended on conditions).
21. Looking at the overall pattern of offending and Mr. Pouono's background, family circumstances and his decline into drink and drug use, it is a stark fact that the hammer attack on 8th of November last was part of the deteriorating life he was leading at this time.
22. The maximum sentence this offence carries is one of 5 years' imprisonment.
23. I have considered the case of *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.
24. Chief Justice Paulsen considered that a starting point of 2 ½ years' imprisonment was appropriate.
25. I have gone on to consider *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.
26. I have also considered (b) *Hu'ahulu & Anor v Police* [1994] Tonga LR93 where 2 men attacked another man and injured him with a broken bottle thrust into his face and with a stone also struck at his face. The one who used the stone was sentenced to 9 months imprisonment, and the one who used the broken bottle was sentenced to 12 months imprisonment.

¹ Possession 0.08 methamphetamine and possession 0.38 g Cannabis

27. This latter case I do not feel assists, partly in that it is too old and the use of the broken bottle to the face is a very different attack in my view.
28. Weighing up the sentence ranges between *R v Lavelua* 2018 and *R v Talau* CR 31/2021 I consider that the appropriate sentence is one of 3 years' imprisonment. Because of the guilty plea a discount in his sentence is merited.
29. I follow the formula I rigidly adhere to, so as to provide consistency and certainty for defendants. An early guilty plea attracts a discount of 30% and then a sliding scale with a plea at the first day of trial attracting a 10% discount.
30. I pause to note that there will be some offences that are too serious to attract a discount that significant discount despite an early guilty plea, or indeed where a defendant has been caught red handed a discount would not be appropriate.
31. That is not the situation here and I return to the formula I have set out.
32. His guilty plea will attract a discount of 10%, that is to say 3 ½ months, rounding it off.
33. That makes a sentence of 32 ½ months.
34. But, following the consideration and rational of *R v Vi* [2021] TOSC 91 and recognising his upbringing and that this offence was part of a continued course of conduct over some days, I come to the view that it is right that this sentence should be concurrent to that passed on 21st June this year by Lord Chief Justice Whitten QC.
35. That sentence has attached to it conditions upon his release and I do not alter or add to those.

NUKU'ALOFA
31 August 2021

