

ATTORNEY GENERAL'S OFFICE	
INITIALS: <i>AL</i>	DATE: <i>30/09/21</i>
<input checked="" type="checkbox"/> File	<input checked="" type="checkbox"/> Website
<input checked="" type="checkbox"/> Database	<input type="checkbox"/> Social Media
<input checked="" type="checkbox"/> Email internal	<input type="checkbox"/>

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

CR 95 & 96 of 2021

REX -V- TUPOU HAUPEAKUI (CR95/2021)

REX -V- LAFITANI MAHE (CR96/2021)

BEFORE HON. JUSTICE NIU

Counsel : Mrs. S. 'Eliesa for the Crown.
Mr. S. Tu'utafaiva for both accused.

Pleas : Guilty, on 31 August 2021.

Submissions: by 'Eliesa on 14 September 2021.

: by Tu'utafaiva on 28 September 2021.

Sentencing : 30 September 2021.

SENTENCING

Offences

[1] You, Tupou Haupeakui, now appear for sentence for the offence of possessing 0.24 gram of methamphetamine at Fasi on 28 October 2020, and you, Lafitani Mahe, now appear for sentence for the offences of possessing 2.02 grams of cannabis, assaulting a police officer, and interfering with the course of justice at the same time and place. You both pleaded guilty to committing your respective offences.

- [2] What happened was that the police received information that you Tupou was driving around in a rental vehicle in Nuku'alofa with you, Lafitani, and selling drugs. The police found and followed your rental car from Mataika to Fasi where you turned into a home there and you both got out of your car.
- [3] The police officers got out of their vehicle and walked towards you, and when you saw them you both ran. You, Tupou, threw a plastic bag away before you ran. And you, Lafitani, threw away 2 packs of cannabis before you ran. The police chased and caught both of you. They found the plastic bag that you, Tupou, threw away and it contained 5 packs of methamphetamine and a straw. You told the police that some guy in town had given it to you.
- [4] You, Lafitani, put a pack of white substance into your mouth when you were caught. You were told to spit it out but you didn't, so the officer tried to take it out but you bit his finger. You spat out the pack sometimes afterwards but the white substance in it had already dissolved. The police found the 2 packs of cannabis that you threw away.
- [5] They also found in the rental car a test tube in an empty coke can on the dashboard of the car and also empty packs and cash of \$110 in the car.
- [6] The methamphetamine in the 5 packs weighed 0.24 gram and the cannabis in the 2 packs weighed 2.02 grams.
- [7] When questioned by the police about these drugs you both did not cooperate.

Previous convictions

- [8] The Crown says that you both have previous convictions as follows:
- (a)Tupou: (a) in 2016 - fined \$400 for drunk driving.
- (b) 25 May 2021, Sup. Court - 9 months imprisonment for possessing 0.46 gm

meth fully suspended
on conditions.

- (b) Mahe: (a) 2009, Mag. Court - fined \$170 for trespass, theft and disturbance.
- (b) 2018, Mag. Court - 6 months imprisonment for theft, 3 months for unlawful entry, 6 months for house breaking all to be concurrent and suspended for 2 years.
- (c) 2021, Sup Court - Serious housebreaking and illicit drugs – 5 years 6 months.

Reports

- [9] Reports had already been done by the probation officer in respect of each of you early this year in respect of separate offences which you had each committed, and in respect of which you have already been sentenced. I need not recount their contents. I am aware of each of your histories and personal and family circumstances.

Submission of the Crown

- [10] Crown counsel, Ms. 'Eliesa, has submitted that 3 cases are comparable to your offences. They are:
- (a) ***R v Fa'aoa*** (CR312/2020) where the accused pleaded not guilty to but was found guilty of possessing 0.30 gm of methamphetamine. He pleaded guilty to possessing 26 .22 bullets with which he was also charged. He was sentenced to 9 months imprisonment for the methamphetamine and 2 months imprisonment for the bullets, both to served concurrently, the last 6 months being suspended on conditions.

- (b) **R v Kaufusi** (CR324/2020) where the accused was convicted after trial of possessing 0.12 gm of methamphetamine. He had a conviction in the US. for auto theft. He started with 9 months and 1 month was deducted for his clean record in Tonga. He would have had another 2 months deducted but for his record overseas. 4 months of the remaining 8 months were suspended for 12 months on conditions.
- (c) **R v Mateni** (CR213/2020) where the accused was convicted after trial of possessing 8.08 grams of methamphetamine and of interfering with evidence. He started with 4 years for the methamphetamine and 2 years for the interference. From the 4 years, 6 months were deducted for having no previous drug conviction. Both sentences were to be served concurrently, a total of 3 years 6 months, with the final 12 months being suspended on conditions.

[11] She therefore submits that because of the circumstances in your case, and based on the sentences imposed in those cases, you, Tupou should start with 9 months for possessing the 0.24 gm of methamphetamine but to be reduced by 3 months for your guilty plea. She says that you have shown remorse by pleading guilty and so she says you should have the final 3 months of the remaining 6 months suspended for 12 months. She also says you should be on probation during the suspension and that you undertake the drug awareness course.

[12] As for you, Lafitani, she submits that you be sentenced to 18 months for interfering with the evidence, 6 months for the assault and 4 months for the cannabis, all to be concurrent and with the final 6 months of the 18 months being suspended for 2 years on conditions. She recommends that of the 12 months which you have to serve, 6 months only of that be served after you have served the sentence which you are presently serving.

[13] Crown counsel has asked that –

- (a) the illicit drugs found be destroyed; and
- (b) the paraphernalia and cash of \$110 be forfeited to the Crown.

Mr. Tu'utafaiva's submissions

[14] Mr. Tu'utafaiva has made submissions in mitigation but only in respect of you, Tupou. He says that he agrees with the Crown submissions that you start with 9 months and have 3 months deducted for your guilty plea leaving a sentence of 6 months imprisonment. He however does not agree that only 3 months of that 6 months be suspended. He says that the whole 6 months be fully suspended because you are only convicted of possessing, not supplying, and that you have fully complied with the sentence which was imposed on you in May this year, namely, that your 9 months sentence there be fully suspended for 2 years on conditions, one of which was to perform 50 hours community service and another was to complete the drug awareness course. You have also not re-offended, because this present offence was committed in October 2020, before you were sentenced in May this year.

Consideration

[15] **I will deal first with you Tupou.** I agree with both counsel that the appropriate sentence for you is 6 months imprisonment. That is consistent with the cases referred to and also with the case of **Tengange** (CR231/19) which was a case of a first offender. His 6 months sentence was fully suspended but he had to serve 30 hours community service.

[16] Because your present offence was committed before you were sentenced by me in May this year, I consider that if you had pleaded guilty for the present offence in May, instead of pleading not guilty, and that I had sentenced you for this offence together with that other offence, I would have treated you as having no previous drug conviction and would have considered that, in your circumstances as

I found in May, you were entitled to full suspension for this offence as well.

- [17] I have been advised by the probation service that you have fully served your 50 hours of community service and that you have yet to complete the drug awareness course. The reason for that sentence was so that you do not have to serve a prison sentence, unless you breach the conditions of suspension of your sentence. If I were to sentence you for the present offence to serve 3 months of your 6 months sentence as proposed by the Crown, then there would have been no point in suspending your 9 months sentence for the first offence.
- [18] I consider that I should treat both these offence as if they are your first offences as well. But because they were committed separately and independently, you should be punished for them separately, so long as they reflect that they are your first offences. I consider that that the suspension applicable in the first case be applicable in the present case as well.
- [19] Because you have served 50 hours community service for 0.46 methamphetamine found on you in May 2020, I consider that you serve another 25 hours separately for 0.24 gram methamphetamine found on you in October 2020 in the present offence.

Sentences

- [20] Accordingly, I sentence you as follows:

You, **Tupou Haupeakui**, are sentenced for the offence of possessing 0.24 gram of methamphetamine at Fasi on 28 October 2020 contrary to S.4 (a) (iii) of the Illicit Drugs Control Act to 6 months imprisonment but which shall be fully suspended for a period of 2 years from 25 May 2021 upon the following conditions:

- (a) You will serve 25 hours of community service as directed by the probation service;

- (b) You will not commit an offence punishable by imprisonment within the period of suspension.
- (c) You will report to the probation service immediately after this together with a copy of this sentencing to arrange for the community service you are to carry out.

[21] **I will now deal with you, Lafitani.** You are presently serving an imprisonment sentence of 5 years 6 months which was imposed on you on 26 February 2021 for housebreaking and theft for which you were sentenced to 5 years, and for possessing 1.4 grams of methamphetamine for which you were sentenced to 12 months imprisonment, but which 12 months were to be fully suspended for 1 year. The extra 6 months you were given was the activation of a 6 months sentence for housebreaking and theft which had been imposed by the Magistrate Court previously and which was suspended for 2 years from 5 December 2018.

[22] The Crown has suggested that you be sentenced to 18 months for the interference offence, 6 months for the assault and 4 months for the cannabis, all to served concurrently so that you only have to serve 18 months. But it also suggests that

- (a) the final 6 months of those 18 months be suspended for 2 years, and
- (b) that 6 months of the remaining 12 months which you have to serve be served concurrently with your present imprisonment sentence so that you only have to serve 6 months of those 12 months.

[23] I consider that that is quite proper and reasonable in view of the need to consider your present offences together with your previous offences in order that you are not unduly and repeatedly punished for all these various offences.

[24] For you to serve only, in effect, 6 months for the serious offence of destroying evidence, which was what you did (when you dissolved

the substance in your mouth by putting the pack of white substance in your mouth and refusing to spit out until you had dissolved it with your saliva) is a very light sentence, but which I accept in view of the principle of totality, which must be applied in your case.

[25] Accordingly, I sentence you as follows:

- (1) You, **Lafitani Mahe**, are sentenced for the offence
 - (a) of possessing 2.02 grams of cannabis, contrary to S.4 (a) (i) of the Illicit Drugs Control Act as convicted under count 2 of your indictment, to 4 months imprisonment;
 - (b) of assaulting a police officer, contrary to S.29 (a) of the Illicit Drugs Control Act as convicted under count 3 of your indictment, to 6 months imprisonment;
 - (c) of interfering with evidence, contrary to S.37 (b) of the Illicit Drugs Control Act as convicted under count 4 of your indictment, to 18 months imprisonment.
- (2) All 3 sentences shall be concurrent and the last 6 months of the 18 months sentence be suspended for 2 years from the day you are released from prison, and that of the 12 months which you will serve, 6 months shall be served concurrently with your current sentence, so that you will only serve 6 months in addition to and after your current sentence.

[26] I order that all illicit drugs found in this case be destroyed by the police, and that the paraphernalia and the cash of \$110 found are forfeited to the Crown.

NUKU'ALOFA: 30 September 2021

The seal of the Supreme Court of Tonga is circular, featuring a central emblem with a crown and a cross, surrounded by a wreath. The words "SUPREME COURT TONGA" are inscribed around the perimeter of the seal.
A handwritten signature in blue ink is written over the seal.
Niu J
JUDGE