



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

CR 271 of 2020

REX

-v-

SIUELI ANGILAU

BEFORE HON. JUSTICE NIU

**Counsel** : Ms. 'E. Lui for the Crown.  
: The accused for himself.

**Plea** : Not guilty but convicted on 3 August 2021.

**Report** : by Probation Officer Kelela Tu'itupou, filed on 1 September 2021.

**Submission** : by Mr. Finau filed on 23 September 2021.  
: by the accused in Court on 4 October 2021.

**Sentencing** : on 20 October 2021.

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## SENTENCING

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### The Offences

[1] You, Siueli Angilau, have knowingly possessed 0.55 gram of methamphetamine, and cannabis weighing 267.83 grams, without lawful excuse at Fanga on 1 May 2020, contrary to the provision of the Illicit Drugs Control Act.

[2] The police received information that drugs were being sold at a place at Fanga and they went there and found you and your wife and child in a small house at the rear of the town allotment towards the bush area by the Fanga'uta lagoon.

[3] The methamphetamine were in 3 packs which you tried to swallow when the police arrived and which you later spat out on the floor of the house. One pack of cannabis was on the bed. It weighed 0.69 gram. Two plastic bags of cannabis were found separately hidden at the foot of two saafa bush at the bush area towards the lagoon where the rubbish were being dumped. One bag had cannabis packed in 60 packs altogether weighing 44.59 grams. It also had cash in it of \$200. The other bag had cannabis which weighed 222.59 grams.

### **Previous Convictions**

[4] You have the following previous convictions:

CR164/2012	29/7/2013	S/Court	- Attempted armed robbery - Grievous bodily harm	- 7 years - 3 years Both concurrent, final 2 years suspended 3 years.
CR45/2019	17/5/2019	S/Court	poss: illicit drug	9 months
CR210/2020	15/2/2021	S/Court	poss: illicit drug	3 months

### **Probation Report**

[5] The probation officer says you are 42 years old, you live with your wife and your 2 children aged 8 and 3. You live with your family at your wife's parents place at Havelu and you work for a construction company for 3 months now and you earn \$250 per week.

- [6] You told the officer that you went with your parents to Hawaii and that you attended high school there, you got married but separated after 5 years and then you turned to drugs and you were deported back here in 2009. You married your present wife in 2013 but you were then sentenced for (attempted) armed robbery and you served 3 years 3 months and had another 2 years suspended for 3 years. You re-offended after you completed your suspension and you were again imprisoned in 2019 and 2021.
- [7] She says that you have now made a change in your life and that that is supported by the report from the Salvation Army, your church bishop and your employer, who have each written well on your behalf.
- [8] She says that you have led a life of drug use when you returned to Tonga because you associated with drug people here and you were led into committing the armed robbery and to the subsequent offences. But that you have now seen the error of your ways and now have made a determined effort to rehabilitate yourself by now working for an honest living by being a construction worker and by refraining from drug use and by attending and completing the drug awareness course of 100 hours of the Salvation Army.
- [9] She therefore recommends that you be given a partly suspended sentence with conditions.

### **Crown submissions**

- [10] Crown counsel, Ms. Lui, agrees with that recommendation of the probation officer, and recommends, in accordance with the sentences imposed in the cases she referred to, that you be sentenced to 2 years imprisonment because of the substantial quantity of cannabis which you possessed, and which clearly indicated that it was for the purpose of supply, but that the last year of those 2 years be suspended on conditions.
- [11] She referred to the case of **Fetu'u'aho** (CR58/21 & CR75/21) who pleaded guilty to possessing 183.33 grams of cannabis jointly with **Pangi**

(CR65/2021) who pleaded not guilty but was convicted of the same and to the cases referred to in those cases.

### **Your submissions**

- [12] You made submissions in Court, initially, that you be fined instead of a prison sentence but when opposed by Crown counsel, you abandoned that submission. You then told me that you agreed with the Crown's recommendation that you be sentenced to 2 years imprisonment but with the second year being suspended. But you then went on and asked that the whole 2 year sentence be fully suspended and that you serve 70 hours of community work instead.
- [13] Crown counsel did not agree to that, in view of the substantial amount of cannabis which you had.

### **Consideration**

- [14] A suspended sentence of imprisonment has a strong deterrent effect on the offender because it deters him from re-offending during the period of suspension. But it can only be imposed on an offender if it can be shown that the offender can make use of and respond to that deterrent effect. Eichelbawn CJ put it this way in ***R v Petersen*** [1994] NZLR 533 (CA):

"The suspended sentence is intended to have a strong deterrent effect, so that if the offender is incapable of responding to a deterrent, it should not be imposed."

- [15] That was accepted by the Court of Appeal in ***Mo'unga v R*** [1998] Tonga LR 154 and it upheld the guidelines which the New Zealand Court of Appeal laid down in that case of ***R v Petersen***, and stated:

"Apart from that, the Court suggested a number of situations, intended to be neither exhaustive or comprehensive, in which the suspension of the sentence may be appropriate:

- (i) Where the offender is young, has a previous good record, or has had a long period free of criminal activity;
- (ii) Where the offender is likely to take the opportunity offered by the sentence to rehabilitate himself or herself;
- (iii) Where, despite the gravity of the offence, there is some diminution of culpability through lack of premeditation, the presence of provocation or coercion by a co-offender;
- (iv) Where there has been cooperation with the authorities.”

[16] Those guidelines have been applied by the Courts up to now, either by imposing fully suspended sentence or partly suspended sentence, depending upon the circumstances of each case. One of those circumstances is where there is evidence that the offender has found and kept a steady job with sufficient income for himself and his family and has disassociated himself from his former associates with whom he had associated when he committed the present offence. He is therefore seen to be capable of responding to a suspended sentence and rehabilitating himself. That will truly be a strong deterrent effect of the suspended sentence on him. The suspended sentence will then be seen as a worthwhile sentence to be imposed.

[17] Such suspended sentences were considered and were imposed in the cases of ***R v Finau*** (CR46/2020) where he had planted and maintained 54 cannabis plants. He was sentenced to 2 years imprisonment but was fully suspended and he was ordered to work 80 hours community service, and in ***R v Moimoi*** (CR54/2020) where he had 225.67 grams of cannabis. He was sentenced to 2 years 6 months but was fully suspended. In both cases, both accused demonstrated that they were capable of responding to a suspension of their respective sentences.

### **Full or partial suspension**

[18] A suspension of sentence may be either a full suspension or a partial suspension of the sentence. Section 24 (3) (a) of the Criminal Offences Act

provides that the Court may “suspend the whole or part of” a sentence of imprisonment for a period of up to 3 years.

[19] The purpose of the suspension of a sentence is to enable the offender **to continue** to build the new and better, and law abiding, life for himself, so that he would not re-offend. It is not given in favour of an offender only in the hope that he will build a new and better, and law-abiding life. It is given if the offender has shown or demonstrated that he has begun that new life. As Eichelbaum CJ said, “If the offender is incapable of responding to a deterrent, it should not be imposed.” And the Court of Appeal has stated in guide no (ii) in the **Mo’unga Case**, that suspension should be given “where the offender **is likely** to take the opportunity offered by the suspension to rehabilitate himself or herself.”

[20] But if the suspension was to be only partial, that is, that the offender is to serve a part of the sentence first and then try and rehabilitate himself, or herself, afterwards, he would be more likely **not** to take the opportunity to rehabilitate himself. This is especially so if the rehabilitation which the offender has begun is the finding of a well-paying employment of some permanence. It provides a stable income. It keeps the offender away from his former associates. He does not need the money from those associates or the drugs provided by them for him to sell to get his money. He can honestly work and earn his own money instead.

[21] If he is then sentenced to serve out in prison, a part of his sentence before he is given the partial suspension instead, then his hope and attempt at rehabilitating himself is dashed and lost, because he thereby loses his employment. That employment is not guaranteed to him when he comes back out of prison. His wife and children will also straightaway be without means of livelihood. He would then need to ask his “former associates” for help with the maintenance of his family. He would be obligated to them. He will return from prison and go straight back and do what he had been doing

before. There is no rehabilitation at all when there is such a partial suspension.

[22] I therefore consider that there must be a full suspension of the sentence in order that the purpose of suspension, namely, rehabilitation, is achieved.

[23] In your case, Siueli, you have shown to me that you are capable of responding to a suspended sentence. You have done that by having taken and completed 100 hours of the drug awareness course of the Salvation Army, and you have “graduated”, that is, passed the course. And that is proved by your finding and by your keeping a steady job with Five Star Construction from which you now earn \$250 per week with which you have maintained yourself and your wife and 2 children for 3 months now. Your church bishop also confirms the change which you have now made to your life.

[24] I however do not see why you should be sentenced to only 2 years imprisonment for having 267.83 grams of cannabis when Moimoi was sentenced to 2 years 6 months for having only 225.67 grams of cannabis. I consider that you should have the same sentence, namely, 2 years 6 months and the same 80 hours of community work.

### **Sentence**

[25] Accordingly, I sentence you, Siueli Angilau, for the offences you have committed, as follows:

(a) For the offence of possessing of 0.55 gram of methamphetamine at Fanga on 1 May 2020, as convicted under count 1 of your indictment, to 9 months imprisonment.

(b) For the offence of possessing 267.83 grams of cannabis as convicted under counts 2, 3 and 4 of your indictment, to 2 years 6 months imprisonment.

(c) both sentences in (a) and (b) are to be concurrent and are both suspended for a period of 2 years from today, upon the following conditions:

(i) you are placed on probation;

(ii) you are to serve 80 hours community work as directed by the probation service;

(iii) You are to report to the probation service office within 24 hours after receiving a copy of this sentencing to arrange the community work to be carried out;

(iv) You are not to commit an offence punishable by imprisonment during the period of suspension.

(v) You are to live and work where directed by the probation service.

### **Orders**

[21] In pursuance of S.33 of the Illicit Drugs Control Act, I order that the \$200 found together with the cannabis be forfeited to the Crown forthwith.

[22] In pursuance of S.32 of the same Act, I order that the drugs found in this case be destroyed by the police forthwith.

**Nuku'alofa: 20 October 2021.**



A handwritten signature in black ink, appearing to read "Niu J", is written over the seal.

Niu J

**J U D G E**