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

CR 34, 35 & 48 of 2021

REX -V- 'ASAELI TEULILO (CR34 & 48/2021)
REX -V- PETELO TU'IPULOTU (CR35/2021)

BEFORE HON. JUSTICE NIU

Counsel : Mr. 'I. Finau for the Crown.
: 'Asaeli Teulilo, first accused.
: Petelo Tu'ipulotu, second accused.
Pleas : CR34, 35/2021 both accused pleaded not guilty
but were found guilty, after trial, on 27 August
2021.
: CR48/2021 first accused Teulilo pleaded guilty on
23 September 2021.
Report : by Probation Officers, Tito Kivalu for Teulilo, on 29
September 2021 and Kelela Tu'itupou for
Tu'ipulotu on 26 October 2021.
Submissions: by Crown on 11 October 2021.
Hearing : of accuseds' submissions on 27 October 2021.
Sentencing : 17 November 2021.

SENTENCING

Offences

- [1] Both accused now appear for sentencing for the following offences:
- (a) Both accused, 'Asaeli Teulilo (Teulilo) and Petelo Tu'ipulotu (Tu'ipulotu) jointly possessed, knowingly and without lawful

excuse, 0.13 gram of methamphetamine at Sopus on 18 September 2020.

- (b) Accused Teulilo, at the same time and place, unlawfully interfered with evidence by destroying a glass pipe used for smoking methamphetamine.
- (c) Accused Teulilo, at the same time and place, wilfully obstructed police officer Semisi Tupou from arresting him by kicking him.
- (d) Accused Teulilo, knowingly and without lawful excuse supplied 0.61 gram of methamphetamine to Manavahetau Fua'eiki at 'Anana on 28 October 2020.

- [2] The circumstances of the offences at Sopus were that at about 3 pm that day the police received information that Teulilo was supplying illicit drugs from his van on the Hofoa Road, which road connects with Vuna Road at Sopus.
- [3] The police straight away proceeded there along Vuna Road in 3 motor vehicles. They met the accused vehicle just after they turned into the Hofoa road. The first 2 vehicles only recognised Teulilo driving the van after it had gone past them. They called the last vehicle, which was a police marked vehicle with mounted lights on its roof. That vehicle flashed its mounted blue and red lights and it stopped and blocked the road. Teulilo stopped his van. Its front windows were down. Tu'ipulotu was sitting beside him in the front passenger seat.
- [4] Officer Semisi Tupou got out of the police marked van and called to Teulilo to turn off the vehicle engine and for them to put their hands out the windows. They did not do that and they both wound up their windows and Teulilo backed the van backwards away from the police van.
- [5] Semisi ran up to open Teulilo's door but it was locked. Teulilo had to stop his van because it was blocked by the other 2 police vehicles

behind his van. Teulilo took and hit and smashed a glass pipe on the inside of his window. He then unlocked his door.

[6] Semisi opened the door and reached to turn off the engine of the vehicle and Teulilo kicked him on the shoulder. He punched Teulilo and was then able to turn off the engine and took Teulilo out of the vehicle.

[7] Another officer, Tevita 'Akau'ola, tried to open Tu'ipulotu's door but it was locked too and after about a minute Tu'ipulotu opened it. Tevita took out Tu'ipulotu and as Tu'ipulotu got out an empty pack fell off from him on to the road.

[8] With both accused watching, the van was searched and there were particles of methamphetamine found scattered on the floor of the front passenger seat and there was also an empty pack lying on the floor there.

[9] The particles were collected and were later weighed and they came to 0.13 gram.

[10] Both accused denied knowledge of it and did not cooperate with the police.

[11] They were charged with the above stated offences of 18 September 2020 and were granted bail.

[12] A month and 10 days later, namely, on 28 October 2020, the police received information that illicit drugs were being sold at Teulilo's residence at 'Anana. The police went there right away and found Teulilo washing a car and another man, Manavahetau Fua'eiki, talking to him.

[13] The police found that the man, Fua'eiki, was holding in his hand 2 packs. One pack contained 2 small packs of methamphetamine and the other pack had 10 packs of methamphetamine. When asked whose the packs were, he said that Teulilo had just given them to him.

[14] Teu ilo and the man each had a telephone and on checking Teulilo's phone, the police found that Teulilo had just messaged the man's phone to come and get the methamphetamine to sell. The man's phone confirmed receipt by him of that message.

[15] The total weight of the methamphetamine came to 0.61 gram.

[16] Neither Teulilo nor the man cooperated with the police.

[17] Teu ilo however pleaded guilty to that offence.

Previous convictions

[18] Teu ilo has the following previous convictions:

(a)	CR425/2005	Magistrate Ct	Drunkenness	\$25 fine
(b)	CR266/2020	Supreme Ct	Illicit drug (cocaine)	12 months with final 6 months suspended on conditions for 12 months.
(c)	CR266/2020	Supreme Ct	Cannabis	1 month concurrent with the 12 months.

[19] Tu'ipulotu has a previous conviction in the Magistrate Court in 2012 for cultivating cannabis. No other particular of that conviction is given by Crown counsel.

Pre-sentence Reports : Teulilo

[20] Teulilo is 42 years old. He is the older of 2 children of his parents. His father went to the U.S. while both children were very young and never returned. Teulilo was then raised by his father's sister while he was still very young. When he got a bit older his mother took him back but he did not know her as he did his aunt and he went back to his aunt. Not long after that, when he was 8 years old, his father's brother and his family took him and later went with him with his family to Fiji, then to Samoa and to Cook Islands whilst working as pastor in the Seventh Day Adventist Church.

- [21] In 2000, at age 21, Teulilo went to the U.S where he married and had 1 child but separated and he returned to Tonga in 2004. He then met and married his second wife and they had 2 children. They went to New Zealand in 2017 but they separated and were divorced. He returned to Tonga in 2018. Later his ex-wife returned from New Zealand and they got married again. But in 2019 they separated and have remained so up to now.
- [22] In July 2019, he met up with his present partner and they began living together and they have lived together up to now. That partner owns the business Adiloo in Nuku'alofa.
- [23] Teulilo began taking drugs whilst he was in the U.S. between 2000 and 2004 and he still did until he was sentenced in CR266/2020 on 2 March 2021 to 12 months imprisonment but with the last 6 months being suspended for 12 months from date of release which was in August 2021.
- [24] Before that imprisonment, he worked as security at one of the bars and night club. Having returned from prison he now works as storeman for the Adiloo store business, that is for his partner, for no wages, to help him avoid the temptation to buy, and relapse into, drugs.
- [25] His partner has confirmed to the probation officer that there has been a marked change in Teulilo since he returned from prison. He now regularly goes to Church and his behavior and mood have changed and he is a different person from what he had been before. That is confirmed by the Church Pastor and by the prison religious minister.
- [26] The probation officer therefore recommends that the Court may consider granting Teulilo a suspended sentence during which he be on probation to live and work where directed, carry out and complete 80 hours of community service and to complete the alcohol and drug awareness course of the Salvation Army.

: Tu'ipulotu

- [27] Tu'ipulotu is 30 years old and was married but divorced and has no children, and he lived with his parents but that he does not get along with them and his sisters, and that he now lives with one, Fili Ta'ai, at Ngele'ia where he keeps the house and grounds clean and feed the pigs there for his keep.
- [28] His father was and still is a teacher at 'Apifo'ou College and Tu'ipulotu was brought up well but then he started to befriend persons with drugs and he began taking drugs whilst still in his teens.
- [29] Consequently, he manifested unruly behavior, and protection orders were required to protect the family from him. He no longer went to church and appears to be still associating with persons involved with drugs.
- [30] The probation officer says that Tu'ipulotu is ranked as high risk of re-offending due to his active association with persons involved with drugs. She says that Tu'ipulotu needs to be rehabilitated in order that he can live peaceably with others.
- [31] She recommends that Tu'ipulotu be given a partial or full suspension with conditions that he be on probation to live and work where directed and to abstain from consumption of alcohol and drugs and to complete the drug and alcohol awareness courses of the Salvation Army.

Crown Submissions

- [32] Crown counsel says that there is no mitigating feature for either Teulilo or Tu'ipulotu, but that there are aggravating features against them as follows:
- (a) Teulilo : he was the mastermind.
: he attempted to evade arrest by the police.
 - (b) Tu'ipulotu : he has a conviction in 2012 for illicit drug.
: he locked his door when told to open it.

(c) Illicit drugs is a big issue in Tonga.

[33] Counsel refers to the following cases:

- (a) **R v Latu** (CR12/2021) where that accused pleaded guilty to having 0.4 gram meth, 2.71 grams cannabis and also interfering with evidence. He was sentenced to 6 months for the meth, 18 months for interfering with evidence and 4 months for the cannabis, all to be served concurrently.
- (b) **R v Mateni** (CR213/2020) where the accused had pleaded not guilty but was found guilty of possessing 8.08 grams of methamphetamine and of interfering with evidence. Because he had no previous conviction for drugs he was sentenced to 3½ years for the meth offence and 1½ years for the interference offence, both to be concurrent.
- (c) **R v Pole’o** (CR57/2021) where the accused pleaded guilty to destruction of evidence and for possessing utensils, and not guilty to but was also convicted of possessing 0.13 gram of methamphetamine. The accused was sentenced to 16 months for destroying of evidence, 7 months for possessing the meth and 4 months for possessing utensils, all to be concurrent.
- (d) **R v Holani** (CR65/2020) where the accused pleaded guilty to supplying 1.58 grams of methamphetamine. He was sentenced to 18 months imprisonment but with the last 9 months being suspended on conditions.
- (e) **R v Taione and Tongamoa** (CR191-192/2020) where both accused pleaded not guilty but were found guilty of possessing 0.01 gram of cocaine. They were sentenced to 15 months imprisonment but were fully suspended on conditions.

[34] Counsel also refers to the New Zealand case of **Zhang v R** [2019] NZCA 507 where the New Zealand Court of Appeal set out bands for sentencing of class A drugs. Band 1 is for less than 5 grams of the drug. It provides for a sentence which ranges from community service up to 4 years imprisonment.

Teulilo

- [35] With regard to Teulilo, Crown counsel says that in respect of CR34/2021 the head sentence should be the offence of interfering with evidence and that the starting point for that sentence be 2 years imprisonment, and that that starting point be increased by 3 months because Teulilo committed that offence whilst he was on bail on the CR266/2020 charge for which he was sentenced to prison earlier this year. He therefore says that Teulilo be sentenced to 2 years 3 months for the offence of interference with evidence.
- [36] As to possessing 0.13 gram of methamphetamine, he says that Teulilo be sentenced to 9 months imprisonment, and that as to the offence of obstructing a police officer, he says that Teulilo be sentenced to 6 months imprisonment, which are all to be served concurrently, that is, that Teulilo serves 2 years 3 months altogether, but that the last 6 months be suspended for 12 months on the same conditions which were imposed on him in March this year.
- [37] As to CR47/2021, that is, the offence of supplying 0.61 gram of methamphetamine, Crown counsel says that Teulilo be started with a 12 months sentence and that that sentence be increased by 6 months to 18 months because of his breach of his bail in both CR266/2020 and CR34/2021, but that a deduction of 3 months be made therefrom for his guilty plea to the offence of supplying, leaving a sentence of 15 months.
- [38] As to suspension of that sentence, counsel says that there ought not to be any suspension because Teulilo had committed the offence whilst he was on bail as stated already, and because this was a class A drug.
- [39] Finally, as to the totality principle, Crown counsel says that that principle ought to be applied in respect of these offences of Teulilo. He says that the head sentence be the 2 years 3 months sentence to

be imposed in CR34/2021 and that only 3 months of the 18 months sentence in CR48/2021 be served cumulatively to the head sentence of 2 years 3 months so that Teulilo only serves a total of 2 years 6 months instead of 3 years 9 months.

- [40] He then requests that all drugs found in these cases be ordered to be destroyed and that the utensils found be ordered to be forfeited to the Crown.

Tu'ipulotu

- [41] With regard to Tu'ipulotu, Crown counsel says that the starting point be 9 months imprisonment for possessing 0.13 gram of methamphetamine, and as he says there is no mitigating factor in his favour, Tu'ipulotu's sentence be 9 months imprisonment but with the final 3 months being suspended for 12 months on normal conditions.

Accuseds' submissions

- [42] Both accused were provided with copies of the pre-sentence reports and of the Crown's submissions and were given ample time to study them and they appeared in Court and verbally gave their submissions in mitigation.
- [43] Teulilo says that he has nothing to say about the Crown's submissions as to the sentences he was to receive except to ask for the Court's mercy and to grant him community service to do instead. He says that he has learnt a lot whilst serving his recent prison sentence and that he has now devoted himself to being a good partner and to going religiously to Church every Sunday, first to the Church of Tonga at Pikula with his partner at 10 am because his partner is a member of that Church, and he then goes at 11 am to the Seventh Day Adventist Church where he is a member.
- [44] He says that he began going religiously to the Church services at the prison and that he had not taken any drugs at all in prison or after he came out of prison and that he has continued taking no drug and continuing with his religious conversion up to now. He says that all

he wants to do now is to be free of illicit drugs and not to go back to what he had been before. He says that what the probation officer has said about his partner's comments about the change which he has made to his life is true.

- [45] Tu'ipulotu says that he is repentant for what he has done and asks that he be given a second chance. He said that he had begun taking drugs since 2015 and that his behavior as described by the probation officer and in respect of which protection orders were made against him was true. He says that he has never attended any training or course on drug abuse or anger management, and agrees that such training would help him overcome his addiction and angry behavior. He says that he is still doing his business of repairing and unlocking telephones and laptops in addition to housekeeping, and pig feeding at Fili Ta'ai's place where he lives.

Consideration

Teulilo

- [46] I shall first consider the sentences for the several offences which Teulilo has committed, namely:
- (a) joint possession with Tu'ipulotu of 0.13 gram of meth at Sopusu on 18 September 2020;
 - (b) interference with evidence by smashing a glass pipe used for smoking meth at Sopusu on 18 September 2020;
 - (c) obstructing a police officer by kicking him to prevent his arrest at Sopusu on 18 September 2020, and
 - (d) supplying Manavahetau Fua'eiki with 0.61 gram of meth at 'Anana on 28 October 2020.

Methamphetamine 0.13 gm

- [47] As to the first offence, that is, of possessing, jointly, of 0.13 gram of methamphetamine, I agree with Crown counsel that the appropriate sentence for that offence, for Teulilo, is 9 months imprisonment. That is in line with the sentences imposed in other cases where a

similar amount of methamphetamine was possessed by those offenders.

Interference with evidence

[48] As to the second offence, that is, of interfering with evidence by smashing a glass pipe used for smoking methamphetamine, I agree with Crown counsel that the starting point for that offence be 2 years imprisonment but I do not agree that the starting point be increased by the fact that Teulilo committed that offence whilst he was on bail for the offence committed in CR266/2020, for which offence he was sentenced in March this year, as counsel has recommended that it be increased by 3 months so that Teulilo's sentence be 2 years 3 months.

[49] I consider that the fact that Teulilo has committed this offence whilst he was on bail was properly a matter to be considered, and dealt with, as a breach of his condition of bail. Section 5 (iii) (b) of the Bail Act properly provides for it, as follows:

"5. A person granted bail –

...

(iii) may be required by a Court at any time to comply with such requirements as appear necessary to secure that –

...

(b) he does not commit an offence while on bail;

..."

[50] I am not aware of and counsel did not provide me with any requirement which the Court had required of Teulilo "to secure that he does not commit an offence while on bail," if there was such a requirement on his bail. Nor has counsel provided any authority for the proposition he makes and I am not aware of any.

[51] I therefore consider that the proposed sentence of 2 years should not be increased as suggested for this offence.

Obstruction of a police officer

[52] As to the third offence, that is, of obstructing a police officer by kicking him to prevent his arrest, I agree with Crown counsel that Teulilo be sentenced to 6 months imprisonment.

Concurrent sentences

[53] I also agree that all the three sentences for the three offences committed at Sopus on 18 September 2020 be concurrent with each other, because they were all committed at the same instance.

Supplying drug

[54] As to the fourth and last offence, that is, of supplying Manavahtau Fua'eiki with 0.61 gm of methamphetamine, I agree with Crown counsel that the starting point be 12 months imprisonment, but I do not agree with his proposal that that starting point be increased by reason that Teulilo had breached his condition of bail when he committed this 4th offence, for the reasons which I have already stated above. But I agree with a deduction on account of the guilty plea which Teulilo gave when he was charged with this offence in this Court. I would however deduct 4 months rather than 3 months for that, leaving a sentence of 8 months.

Totality application

[55] I agree with Crown counsel that the totality principle should be applied in this case in respect of the sentences of Teulilo, but I consider that Teulilo should serve at least half of his sentence of 12 months for the supplying offence as extra to his other 3 offences. That is because the offence of supplying is a much more serious offence than simple possessing of illicit drug, especially a class A drug.

Suspension

- [56] Now, as to suspension of those or any of those sentences, I have stated my reasons for considering that any breach by Teulilo of his condition of bail by committing any of those 4 offences was a matter properly to be dealt with under the Bail Act, and only for the purpose of considering whether or not to grant him bail. I am not aware of any authority that it can be used for declining suspension of his sentence or any part of his sentence.
- [57] The case of ***Mo'unga v R*** [1998] Tonga LR 154 has laid down 4 situations which may qualify an offender to suspension of his or her sentence. The second of those situations is: "Where the offender is likely to take the opportunity offered by the (suspended) sentence to rehabilitate himself or herself."
- [58] Teulilo informed me in Court that he has ceased the use of illicit drug when he began serving his prison sentence of 9 months on 2nd March 2021 and that he has not touched the stuff, or any drug up to now. The probation officer has stated that Teulilo's partner, who owns the business Adiloa, has confirmed that and that she is most pleased with the transformation which Teulilo has made to his life, as shown by his devotion to his church attendances and activities.
- [59] To me, that is evidence that Teulilo "is likely to take the opportunity offered by the suspension to rehabilitate himself."

Community service

- [60] Teulilo did ask me to give him a sentence of community service, and like the cases of ***Hu'akau*** (CR 247/20) who had 0.10 gram of methamphetamine, ***Lave*** (CR 185/20) who had 0.11 gram of methamphetamine, ***Fifita*** (CR 232/20) who had 0.16 gram of methamphetamine, ***Leka*** (CR 15/20) who had 0.61 gram of methamphetamine and ***Latuselu*** (CR 328/20) who had 0.70 gram of methamphetamine, all those accused were given fully suspended sentences and were ordered to serve community service of around 50 hours.

[61] I consider that in view of the genuine efforts which Teulilo has taken to rehabilitate himself, he ought to be given the opportunity to continue that rehabilitation and at the same time serve community service, in order that he does not break the momentum he now has in advancing to a better life for himself and his partner.

Tu' pulotu

[62] Now, as to Tu'ipulotu, I agree with Crown counsel that the appropriate sentence for him for possessing jointly 0.13 gram of methamphetamine is 9 months imprisonment.

[63] However, I do not agree that only 3 months of those 12 months sentence be suspended. I consider that the whole of the 12 months be suspended and that they be suspended for at least 2 years, in order that immediate probation be exercised over him so that he lives and works where directed including direction and supervision as to who he is not to associate with, and to take and complete drug awareness and anger management courses and carry out community service as well.

[64] If he breaches any of those conditions or if he re-offends, he then serves out his suspended sentence. But at least in the meantime he has the help of the probation service to guide and put him right to achieve the rehabilitation he needs himself.

[65] I consider that he is relatively young at his age of 30 years and that he has had a relatively long period without criminal activity since 2012 when he had the conviction in the Magistrates for cannabis. I therefore consider that he may be qualified under the first of the 4 situations listed in the ***Mo'unga Case***, namely, "where the offender is young, has previous good record or has had a long period free of criminal activity".

[66] I also consider that he may come under the third of the 4 situations as well, namely "where, despite the gravity of the offence, there is some diminution of culpability through lack of premeditation, presence of provocation, or coercion by a co-offender."

[67] I consider that Tu'ipulotu may have been coerced by Teulilo who is much older at age 42 and is much bigger in size as well as being the owner of the van in which they were caught. During the trial, it transpired that Teulilo had told Tu'ipulotu, while the police were questioning them at the scene as to who owned the methamphetamine particles found on the floor, to own up for those particles, and Tu'ipulotu did. So I am of the view that Teulilo was the leader. In fact, Crown Counsel says in his sentencing submissions that Teulilo acted "as the mastermind in the offending" and I agree with him.

[68] I therefore consider that Tu'ipulotu does qualify to be given a suspended sentence but subject to the conditions I have indicated.

Sentences

[69] I therefore sentence the two accused as follows:

(a) **'Asaeli Teulilo**

You, 'Asaeli Teulilo, are sentenced:

- (i) For the joint offence in count 1 of your indictment CR 34/2021 of possessing 0.13 gram of methamphetamine at Sopu on 18 September 2020, to 9 months imprisonment.
- (ii) For the offence in count 2 of your indictment CR 34/2021 of interfering with evidence by smashing a glass pipe used for smoking methamphetamine, at Sopu on 18 September 2020, to 2 years imprisonment.
- (iii) For the offence in count 3 of your indictment CR 34/2021 of obstructing a police officer by kicking him to prevent your arrest at Sopu on 18 September 2020, to 6 months imprisonment.

All of those three sentences are to be concurrent.

(iv) For the offence in your indictment CR 48/2021 of supplying Manavahetau Fuaeiki with 0.61 gram of methamphetamine at 'Anana on 28 October 2020, to 8 months imprisonment, 4 months of which are to be concurrent with the sentences for the above 3 offences, and 4 months are to be cumulative thereto, so that your overall sentence for the 4 offences is 2 years 4 months, but which shall forthwith be suspended for a period of 3 years from today upon the following conditions:

- (1) You are placed on probation and to live and work where directed by the probation officer,
- (2) You are to serve 50 hours of community service as directed by the probation officer,
- (3) You are not to commit any offence which is punishable by imprisonment during the period of suspension of your sentence,
- (4) You are to report to the office of the probation officer within 24 hours of receiving these orders today.

(b) **Petelo Tu'ipulotu**

You, Petelo Tu'ipulotu are sentenced for the joint offence in count 1 of your indictment CR 35/2020 of possessing 0.13 gram of methamphetamine at Sopu on 18 September 2020 to 9 months imprisonment, but which sentence shall forthwith be suspended for a period of 2 years from today upon the following conditions:

- (i) You are placed on probation to live and work where

directed by the probation officer and you are not to associate with all persons directed by the probation officer;

- (ii) You shall take and complete the anger management and drug awareness courses of the Salvation Army;
- (iii) You are not to commit any offence that is punishable by imprisonment during the period of suspension of your sentence;
- (iv) You are to report to the office of the probation officer within 24 hours of receiving these orders.

Orders

[70] I order that the drugs, utensils and paraphernalia found in connection with these cases be destroyed by the police forthwith as provided in S.32 of the Illicit Drugs Control Act.

NUKU'ALOFA: 17 November 2021.

