

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

CR 149 of 2008

REX

-V-

'ALAMONI MAKAFILIA

BEFORE THE HON. JUSTICE SHUSTER

SENTENCE 23rd MARCH 2012 @ 1400

SENTENCING REMARKS

HAVING HEARD FROM - Crown Counsel, Mr.Pounou and from the defendant in person.

The defendant pleaded guilty to three counts on arraignment on 08th March 2012 to a five count indictment in file CR149 of 2008 - alleging one count of conspiracy to commit armed robbery, one count of armed robbery and one count of Housebreaking.

The defendant pleaded not guilty to an offence of possession of arms without a licence and, trespassing with arms in a building- however in view of the defendants pleas of guilty to counts one, two, and five, the Crown offered no evidence to counts three and four the lesser offences and those charges - were dismissed.

On the defendant entering his early guilty pleas on arraignment on 08th March 2012, the facts were opened and agreed, and the case was

adjourned for the preparation of a Pre-Sentence Report and to obtain details of convictions if any.

The defendant was remanded in custody to be sentenced on Friday 23rd March 2012 @ 14.00, he was remanded in custody because of his prior history of not attending court for arraignment on 05th June 2008 and in view of the serious nature of this case. This case concerns an allegation of housebreaking at night by four armed men and the complainant including six young children - were held hostage in their home at gunpoint by the defendant - whilst three other men armed with another firearm - searched the home and stole property valued at \$15,450.00TOP.

No property has been recovered from this crime. The court was told another person is serving a prison sentence in connection with this crime

THE BRIEF FACTS

The prosecution allege that on the night of 23rd March 2009 at around midnight, the accused with three other men had previously made plans to rob the home of Mr. Sione Tafolo of Tofoa. According to the probation report one of the robbers the defendants brother was working for the complainant.

The four men involved on that night - had apparently disguised their features by wearing face masks. They carried two rifles which they intended to frighten the occupants. Prior to entering the complainants house, the men had cut the telephone lines. Once inside the complainants house they gathered all the occupants into the living room.

The occupants of the house at that time included six children. The Court was told the defendant held all the occupants at gunpoint and he threatened to injure them if anyone moved. The armed men robbed the complainant of property to the value of \$15,640.00 and they each made good their escape.

According to the Crown the defendant was arrested approximately a month after the allegation and he was charged with these offences by the police and he made frank admissions to the police concerning his involvement in

the crime. The defendant was subsequently bailed to appear in the Supreme Court on 05th June 2008 but the defendant failed to appear in court and a bench warrant was issued for his arrest. The Court was told the defendant left for Fiji and he was only recently deported by Fiji authorities

The defendant was arrested on 05th March 2012 on his return to Tonga he was produced in court on 08th March 2012 and to his credit the defendant on being arraigned pleaded guilty to three serious charges.

The defendant had no lawyer to represent him so Mr. Pounou was asked by the court to assist the defendant during sentence, the defendant was remanded in custody to 14.00 hours on 23rd March 2012 - for sentence he was refused bail on the grounds he might abscond.

STARTING POINT

On his appearance in open court on 23rd March 2012 - I told the defendant that my starting point for a person who with others - steals property from a dwelling house late at night and who holds hostage people, more particular when he admits holding hostage six young children at night and then flees the court's jurisdiction to live abroad for FOUR years, on a not guilty plea is a sentence of TWENTY years imprisonment - even for a first time offender

However to his credit the defendant pleaded guilty at arraignment at the first available opportunity - he is entitled to credit for that early guilty plea - BUT the defendant is not a first time offender. The defendant has two previous convictions of [a] being found in premises at night on 01st Nov 2005 and [b] unlawful entry by night on 19th May 2006 when he received a prison sentence here at the Supreme Court.

For his early guilty plea in my view the defendant is entitled to a reduction of five years. The defendant told the Probation Officer he was a first time offender – well the court knows – that he is not a first time offender. The final comment comes from the probation officer who wrote the presentence report and I quote the probation officers final comment:-

“I the report writer is concerning about the safety of the people and their properties. It seems that this organize crime

is getting worse by involving of arms. I hereby recommend that your honorable court may put the accused to a place where the society may maintain security asnd unharmed-Malo.”

This court entirely agrees with the final paragraph of that probation report. This man held hostage six innocent children late at night while he and three others robbed the occupants of a significant amount of property. That is an aggravating feature of this crime.

This crime was planned and it was also premeditated. The phone lines to the house were cut, and the mens faces were disguised by wearing masks another aggravating feature of this crime.

Further the defendant fled the courts jurisdiction for just under four years before he was deported back to Tonga. If the defendant had not been deported from Fiji he would more likely than not - NOT be standing here in court today he would still be in Fiji with his girlfriend.

Only a personal letter from the defendant addressed to this court and his early guilty pleas have stopped the defendant from receiving - a twenty year prison sentence, a sentence which in my view would be entirely appropriate and justified for a man who holds hostage six young innocent children – who were by his own admission held at gunpoint, in the middle of the night and threats were made to injure the children - if they moved.

Accordingly the defendant is sentenced as follows:-

Count 1 - The defendant is sentenced to **SIX - YEARS** in prison

Count 2 - The defendant is sentenced to **FIFTEEN - YEARS** in prison because the defendant was armed and held six innocent children at gunpoint

Count 3 – The Crown offer no evidence and the charge is dismissed

Count 4 – The Crown offer no evidence and the charge is dismissed

Count 5 - The defendant is sentenced to **FIVE - YEARS** in prison

N.B - All sentences are – to be served concurrent.

The court then goes on to consider if it can suspend any part of the sentence which has just been passed on the defendant.

In this case the court has decided to suspended **TWOYEARS** of that **FIFTEEN** year sentence which it has just passed, but this suspension is conditional on the defendant - keeping the peace and being of good behaviour and committing no further offending during the remaining period of the suspension of the sentence of imprisonment .

This sentence of thirteen years imprisonment is to start from 08 MARCH 2012 - which is the date of the defendants first remand in custody on a bench warrant issued for not attending court on 05th June 2008.

I certify the court has warned the defendant about committing ANY further offences during the period of his suspended sentence.

This is to be a deterrent sentence, applying the principles enunciated in the case of the Crown –v- Cunningham.

A copy of this order is to be served on the defendant and on - the Prison Service.

THE TOTAL PERIOD OF IMPRISONMENT IS TO BE THIRTEEN YEARS IMPRISONMENT STARTING FROM 08TH MARCH 2012

Dated: 23 March 2012

J U D G E

T.L.Piei