

REX

-V-

KITEAU KOLOTAU

**BEFORE THE HON. ACTING CHIEF JUSTICE SHUSTER**

**HAVING HEARD** - Crown Counsel, and from the defendant in person.

**The defendant appears for sentencing** - having pleaded guilty on re-arraignment on 19<sup>th</sup> December 2011; to an indictment alleging two counts of HSB and Indecent Assault, allegedly committed on 13<sup>th</sup> January 2011 at Touliki.

On re-arraignment on 19<sup>th</sup> December 2011 the Crown who were represented by the Solicitor General Mr. Kefu formally offered no evidence on the second count the Indecent Assault charge, and that charge was formally dismissed by the Court.

On re-arraignment on count one the HSB charge, the defendant was told he would be given credit for his change of plea. The facts were read out admitted and agreed. It was noted the defendant was a first time offender. That said the Court felt it was unnecessary to adjourn the case for the preparation of a Pre Sentence Report

<b>The brief facts:-</b>
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According to the prosecution the defendant was drunk when he broke into his neighbours house on the night of the 13<sup>th</sup> January 2011. According to the Prosecution the complainant who was asleep when the defendant

broke into her house woke up and screamed and the defendant ran away however he had been identified by a witness at the scene.

The defendant was later arrested by the police he admitted to being drunk but he said he could not remember much about that night.

Having considered all the facts of the case, and considering the fact the defendant pleaded guilty after he had asked to be re-arraigned and, the fact the defendant co-operated with the police and with this court and having heard from the defendant in person and noting from Mr. Kefu that the defendant was a first time offender – I told the defendant that housebreakings are becoming more prolific in Tonga and the aggravating feature of this crime is that it was committed at night with people inside the house who were asleep. His mitigation he was drunk and he has apologized.

In the courts view a deterrant sentence is usually warranted for an invasion of a persons home at night. I told the defendant had he pleaded NOT guilty and been found guilty after trial, then he would have likely been sentenced to a period in custody with two years as a starting point for a person who had pleaded Not guilty. However as the defendant pleaded guilty that starting point of two years can be reduced, more particularly because of the defendants age and the fact that prior to this incident the defendant had lead an unblemished life

**The defendant is sentenced as follows:-**

**Count ONE**– The defendant is **CONDITIONALLY DISCHARGED** for a period of **THREE** years from todays date. The defendant is ordered to keep the peace and be of good behaviour to everyone and he is to commit no further offending during the period of this Conditional Discharge.

The defendant is also ordered to perform 120 hours of community service by cleaning up the environment. The defendant is specifically tasked with the following tasks in cleaning up the environment – which means he is ordered to be part of a team of offenders – ordered to picking up the weeds growing in the roadway, next to the gutters on Vuna Road, and he is

specifically tasked with keeping - the drains and gutters clear on Vuna Road - from the Palace to the NZ High Commissioner's residence. He is also to keep the area free from rubbish debris plastic bottles and tin cans all types of rubbish, which harms the environment.

The defendant is also ordered to enroll in and to complete the Salvation Army Drugs and Alcohol Awareness Course and also the Life Skills Course

I have warned the defendant about committing any further offences and of the consequences of failing to perform his 120 hours of Community Service or completing the Drugs and Alcohol Awareness courses as ordered

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

<p><b>N&gt;B&gt; A copy of this order is to be served on the Probation Service forthwith</b></p>
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**DATED 18<sup>th</sup> January 2012**

**J U D G E**