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07/05/12

IN THE SUPREME COURT OF TONGA

CR 135 & 138 OF 2011

CRIMINAL JURISDICTION

NUKU'ALOFA REGISTRY

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REX

-V-

KONILATI 'ESAU

VAINIKOLO HALANGAHU

BEFORE THE HON. JUSTICE SHUSTER

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

**The defendants appears for sentencing** - having pleaded guilty on re-arraignment on 22<sup>nd</sup> March 2012; to an indictment, alleging a single count of Bodily Harm. The defendants had previously pleaded not guilty and had elected trial by a judge alone. On the date of the trial the defendants indicated they wished to change their pleas, the court ascertained the change of plea was voluntary the defendants were re-arraigned and convicted on entering guilty pleas. The facts were opened and agreed.

The case was adjourned for the preparation of PSR's and the defendants remanded on conditional bail to re-appear for sentence on 20<sup>th</sup> April 2012 at 14.00.

It should be noted the defendant 'ESAU is a **Not** a first time offender the other two accused are FTO. To their credits the defendants fully admitted their parts in this assault on a public officer to the police during interview and to this court on pleading "guilty" on re-arraignment and the court must give them some credit for accepting responsibility for their offending.

**THE BRIEF FACTS**

The prosecution says - on the afternoon of 19<sup>th</sup> December 2010 the complainant was a community police officer he was on duty and making

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his rounds at Lapah when he had cause to stop at 'OFA VAKA'UTA's store. On the front verandah at the store were a group of men, including the three defendants who were drinking.

The complainant confronted a young man [ not a defendant] about an incident earlier that week. The defendant Vainikolol Halangalu interjected yelling to the complainant - telling him to "leave Petelo alone." The other co-defendants then walked over and surrounded the complainant. Feeling threatened the complainant admitted he punched the defendant Vainikolo first. The defendants then attacked the complainant beating him repeatedly.

As a result of the assault on himself the complainant suffered injuries and bruising to his face, and his jaw was affected. The defendants were later arrested and they admitted their part in committing the offence to the police. On 20th April 2012 the defendants appeared for sentencing.

Having considered all the facts of the case this was a serious offence involving repeated strikes to the victim a community police officer more than once - to vulnerable parts of his body.

I told the defendants my starting point for this type of offending- involving an assault on a police community officer, would be a prison sentence of between 30 -36 months imprisonment BUT that length of prison sentence would be based on a NOT guilty plea.

**Considering all the facts - the defendant is sentenced as follows:-**

Count 1 – Each defendant is sentenced to **THREE YEARS** in prison – **AND ORDERED TO PAY A FINE OF \$1,000.00**- however the whole of the prison sentence is suspended for the next **THREE YEARS** conditional upon the defendants keeping the peace and being of good behaviour and committing no further offending during the period of the suspension of the sentence of imprisonment.

The defendants were unable to pay the \$1,000.00 fine immediately, so they are ordered to pay the sum of \$40.00 per week. Each payment is to be made to the Supreme Court Registry by 12.00 on the Friday of each week.

Their first payment of \$40.00TOP is due on Friday 04<sup>th</sup> May 2012 by 12.00 in default of payment the defendants will serve EIGHT months in prison.

The defendants can pay more than \$40.00 each week - but they cannot pay less than \$40.00TOP per week, and payments must be regular.

**NB- One half of the fine of \$1,000.00TOP is to be given to the complainant by way of compensation for HIS INJURIES i.e. \$500.00TOP from each of the three defendant s- \$1,500 in total**

Further each defendant is ordered and he is specifically tasked with performing **120 hours of community service**, whereby he will clean up the verges and paths of rubbish weeds and debris on Vuna Road which fill the storm drains - as directed by the Probation Service

In addition – each of the defendants is ordered to enroll in, and to complete the Salvation Army's Drugs and Alcohol Awareness Program and its Life Skills Course - as ordered by this Court .

I certify I have warned the defendants about the consequences of committing any further offences during the period the sentence is suspended of not paying fines or completing community orders and courses. The defendants each indicated they understood these warnings. This is to be a deterrent sentence, applying the principles enunciated in the case of - **Crown –v- Cunningham**

**A copy of my sentencing remarks are to be served on each defendant the Probation Service and the Salvation Army**

**DATED 20<sup>th</sup> April 2012**



*[Handwritten Signature]*  
**JUDGE**