

IN THE SUPREME COURT OF TONGA

CR 73 OF 2010

CRIMINAL JURISDICTION

NUKU'ALOFA REGISTRY

REX

-V-

EDGAR MATAELE

BEFORE THE HON. JUSTICE SHUSTER

HAVING HEARD - Crown Counsel, Mr. Tu'utafavia and from the defendant in person.

The defendant appears for sentencing - having plead **GUILTY** upon **re-arraignment** on 05th September 2011 during the course of a jury trial; to an indictment, alleging the unlawful possession of an arm - a .177 calibre air pistol without a licence contrary to section 4 [1] of the Arms and Ammunitions Act.

The offence is alleged to have occurred on or about 05th January 2010 when the police executed a search warrant at the defendants home and the defendant pointed out the firearm's location to the police. It is important to note that no ammunition was found in relation to the air weapon

On re- arraignment the defendant was told, he would be given credit for his guilty plea and on 05th September 2011 at the conclusion of a jury trial on another matter on which the defendant was acquitted and discharged, the case was adjourned for the preparation of a PSR and the defendant was released on - conditional bail to co-operate in the making of the PSR.

Having considered all the facts of the case, more particularly considering the fact that the defendant pleaded guilty during the trial of this matter and, the fact the defendant had co-operated with the police and also with this court –and having heard from the defendant in person, his counsel and noting the defendant - is NOT a first time offender.

The defendant is sentenced as follows:-

- **Count 2** – The defendant is **FINED \$1,200.00TOP**

Because the defendant has a previous conviction - on 05h June 2001 for importing an arm without a licence where he was fined \$50.00 and, in default of payment he would serve 14 days, and the fact the defendant has NOT exactly led an unblemished life, with other convictions for assault, I have decided to increase my normal sentencing tariff for first time offenders for possession of unlicensed arms - from the \$500- 1000 range fine - to a fine of \$1,200.00 TOP

I told the defendant if the weapon had been loaded with ammunition, or if he had threatened anyone with the firearm or if it had been outside his home with the wweapon in his possession – then he would have received an immediate custodial sentence.

The defendant indicated he could not pay his fine in full today, a reasonable offer was made to pay off this debt. The court orders the defendant pays his fine at the rate of \$50.00TOP per week - the first payment is due one week from today 30th September 2011 by 12.00. The defendant can pay more than \$50.00 per week but he may not pay less. In default of payment the defendant will serve SIX months in prison. The defendant indicated he understood the effenct of not paying his fine

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

The firearm is forfeit to the Crown

DATED 23rd SEPTEMBER 2011



Shuster
JUDGE