

IN THE SUPREME COURT OF TONGA

CR 271 2011

CRIMINAL JURISDICTION

NUKU'ALOFA REGISTRY

REX

-V-

POLONGA TAU'ALUPE

BEFORE THE HON. JUSTICE SHUSTER

HAVING HEARD – From Crown Counsel, Defence Counsel Mrs 'Alisi Taumoepeau and from Mrs "Akanesi 'Aho a social worker [on oath] and, from the defendant in person - in mitigation.

The defendant appears for sentencing - having plead guilty on first arraignment on 03rd November 2011 to an indictment alleging a single count of – **Manslaughter by Negligence**, which offence was alleged to have occurred on Saturday 03rd September 2011

Upon entering an early Guilty plea, the defendant was told he would be given full credit for his early guilty plea, and the case was adjourned for the preparation of a Pre Sentence Report {PSR} to 14.00 on 06th December 2011 when the defendant is bailed to appear for sentence.

It was a condition of the defendant bail, that he co-operates in the preparation of that PSR. The defendant is also disqualified from driving any motor vehicle on any public road in Tonga - until further order of this court and he is to surrender his licence to this court within 24 hours..

THE BRIEF FACTS

The court was told on the night of the 3rd September 2011 the defendant was the driver of a motor vehicle, and Makalita Taulahi (21), was a passenger in that vehicle, she was seated in the rear of the vehicle.

Unfortunately Makalita was not wearing a seat belt, however the driver and the front seat passenger were, and the court was told they were also protected by the vehicles "air bags."

The court was told the reason the defendant drove that motor vehicle after he had consumed alcohol, at a party at his home, was in order to return Makalita to her home, when her lift home - failed to materialize.

According to the prosecution, the defendant drove his vehicle at high speed, along Vuna Road - and at a point in time the defendant lost control of his vehicle, and he crashed at Hala Vuna - head on into a lamp post, at around midnight.

According to the prosecution the deceased was thrown out of the vehicle and she landed on the road. It is unfortunate the deceased was not wearing her seat belt, which seat belt, might have saved her life. Makalita was a lifelong friend of the defendant and tragically she died as a result of her injuries.

To his credit, the defendant remained at the scene and ensured the deceased was taken as soon as practicable to the Viola hospital, where her death was certified by a doctor.

AGGRAVATING FEATURES

The aggravating feature of this offence are - [1] the defendant was driving his motor vehicle under the influence of alcohol, and [2] the defendant was driving at high speed when he lost control of his vehicle on a left curve to the road. It should have been obvious that the defendant was driving his vehicle - far too fast and he lost control, through excess speed / alcohol.

MITIGATING FEATURES

The mitigating factors are - the defendant fully accepted his responsibility to the police and he pleaded guilty to the charge of manslaughter, at the first available opportunity. The defendant did not flee the crime scene, and he took responsibility for his actions. He also co-operated in the police evidential breath testing procedure. Then there is his youth, and the fact

that he was a first time offender . He is rated as highly intelligent and was studying law at the Victoria University, in Wellington.

Counsel for the defendant, Mrs Taumoepeau provided the court with a helpful bundle of documents on 01st December 2011 which the Court has read. Counsel indicated she wished to call evidence on behalf of her client and it was agreed that the court would hear evidence from a New Zealand Social Worker - Mrs Akanesi "Aho, who specialized in working with "youths in trouble with the law."

The Court heard evidence on oath from Mrs "Akanesi 'Aho and was provided with a detailed Social Report and Victim Impact report from that expert. The Court heard from the parents of the deceased, and, received numerous testimonials on behalf of the defendant.

The Court also learnt the defendant had very recently lost his mother to illness – and because he was very close to his mother he had given up his studies at Victoria University, Wellington to be at his mothers side, during the last few days of her life.

I told the defendant , because this was one of the more serious offences of Manslaughter to come before the Court - had the defendant pleaded Not Guilty and been found guilty after a trial, then the defendant would have been sent to prison for a period of between 5/6 years – because a custodial sentence is warranted in this type of case to DETER OTHERS - in view of the high speed and the use of alcohol by the defendant - as these are all serious aggravating features - to this particular type of offence and this type of offending must stop.

CONCLUSION

Having considered all the facts of the case, in particular considering the fact the defendant pleaded guilty, on first arraignment and, the fact the defendant fully co-operated with the police, at the scene of the accident, and then with this court by entering an early guilty plea, and having heard from the defendant,

In my view the most appropriate way of dealing with this case is by way of a **Suspended Prison Sentence** - coupled with a period of **Home Detention** and the use of a community service order of some length, as agreed by the defendant himself- and, by the defendant attending the Salvation Army Drugs and Alcohol and Life Skills Awareness course, coupled with a driving ban licence suspension, again of quite some length.

Accordingly the defendant is sentenced as follows:-

Count One— The defendant is sentenced to **THREE YEARS** in prison

Because the defendant has no previous convictions here in the Kingdom of Tonga, and for all the reasons set out above- I have exceptionally decided to suspend the whole of the sentence of imprisonment which I have just passed; conditional upon the defendant keeping the peace and being of good behaviour and committing no further offences, during the period of suspension.

Further in accordance with the defendant's agreement with this Court, the defendant is ordered and he is specifically tasked with performing 1000 [one thousand] hours of community service, whereby he will become a youth ambassador, travelling around schools in the Kingdom of Tonga educating students on the consequences of drink driving and the significant effects of people - not wearing seat belts in motor vehicles.

This Court accepts statute - says the maximum period of CSO is 120 hours, but the 1000 hours ordered has been agreed to, by the defendant and his counsel and in open court.

Further the defendant is placed on a **HOME CURFEW ORDER** for the next six months he is ordered to remain at home and he is to be inside his home from 6pm to 6am - daily.

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

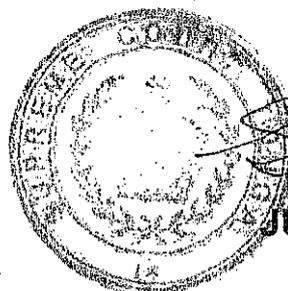
Further- the defendant is prohibited from driving any motor vehicle on any public road in the Kingdom of Tonga for the next seven years. He has surrendered his licence to this Court and the seven year driving ban will start from 03rd November 2011 - when the defendant's driving licence was surrendered.

I have warned the defendant about the consequences of him committing any further offences, and of the consequences of failing to perform his Community Service or completing the Salvation Army courses as ordered and also the consequences if he drove while disqualified.

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

A copy of this order is to be served on the defendant and on the Probation Service the Salvation Army and Driving Licence Authority

DATED 06th December 2011



JUDGE