

SOLICITOR

*Coram Judgment flc*

*26/05/10*

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

NO. CR. 106 of 2009

R E X

-V-

VILIAMI TOKI

BEFORE THE HON. CHIEF JUSTICE FORD

Counsel : Ms Puloka for the Crown and  
Mr. Niu for the accused.

Date of Sentencing : 21 May 2010.

**SENTENCING REMARKS**

- [1] You are appearing for sentence this morning having been found guilty by a jury on one count of bodily harm and two counts of common assault.
- [2] You were acquitted on another charge of theft which related to a completely different matter. The maximum sentence for an offence of bodily harm contrary to section 107 of the Criminal Offences Act (Cap 18) is five years imprisonment and the maximum sentence for common assault, contrary to section 112 of the same Act, is a fine of \$500 or imprisonment for a period not exceeding one year or both.

- [3] The complainant in the three counts you were found guilty of was Manu Lolohea. He had escaped from custody at the Central Police Station in Nuku'alofa. On the day that he was apprehended, which was the 16th of December 2008, you happened to be the senior officer on shift in the Charge Office at the police station. The evidence was that the complainant had been apprehended by police officers on an allotment near Liahona. You had been actively involved in the search for Lolohea but you were not one of those in the search party that had located him.
- [4] The arresting officers had tied Lolohea's hands behind his back with a piece of cord or strap and brought him into the police station where he was carried inside and left on the floor of the Charge Office. His hands were then untied. At that point, you, as the officer in charge of the shift, produced a set of handcuffs and proceeded to cuff Lolohea's hands behind his back and then assault him in the manner described to the jury.
- [5] In your evidence, you denied punching Lolohea or kicking him but clearly the jury disbelieved you. Lolohea said that, while he was still lying on the ground, you kicked him in the mouth and he became unconscious. He said that when he regained consciousness you started punching him.
- [6] A 22-year-old police constable 'Ahohaka told the jury that he saw you come into the Charge Office. He said that Lolohea was seated on the floor and after you cuffed his hands behind his back you punched him on the side of the face. He said the victim then fell back on the ground and you kicked him on the chest with the police work boots that you were wearing. The constable said that, at that point, he was "sympathetic" to Lolohea because he could see that he was not breathing properly and so he and another officer raised him back up into a sitting position. Then, while Lolohea was in the sitting position, you attacked him again and did the same thing until Lance Corporal Palu chased you outside.
- [7] 'Ahohaka said that he and his colleagues were shocked when you carried out your assault on Lolohea and he went over and lifted him up and gave him a bottle of water to drink from because he had lost consciousness and his jaws were locked. The police constable said



that Lolohea could not do anything except apologise to you because his hands were still cuffed behind his back.

- [8] Then there was the evidence of Lance Corporal Palu who, like yourself, was a lance corporal. He had been in the police force for some 18 years. Palu told the jury that after Lolohea had been apprehended and brought back into the police station he was focused on making an entry in the police cell book and so he did not see everything that was happening. He did, however, recall looking up at one point and seeing you kick Lolohea on the forehead while he was lying on the floor.
- [9] The handcuffs you used were your own handcuffs. The witnesses described them as being quite unique. The New Zealand police officers who gave evidence explained how they did not have a double lock that was working and that meant that any movement of the wrists would cause the handcuffs to tighten and bite into the wrists.
- [10] Ahohaka told how shortly after Lolohea was taken to the cells at the police station he asked for the cuffs to be loosened because they were too tight around his wrist but they found that you had gone home taking with you the only keys to your set of handcuffs. The constable went to your home and got you to come back to the police station but when Lolohea asked for the cuffs to be removed to enable him to go to the toilet, you answered: "there was no such thing as going to the toilet." The handcuffs were not removed.
- [11] You then proceeded to assault Lolohea again in the prison cells by punching him on the head around the jaw. Lolohea told the jury about your attacks on him in the prison cell and how you would stomp on the handcuffs to tighten them around his wrists.
- [12] Then there was the evidence given by the two senior New Zealand police officers who arrived at work the following morning and from their office on the first floor of the police station they could hear Lolohea calling out for help from the police cells below. They both went downstairs to investigate. Supt Vern Morris said that Lolohea's wrists were handcuffed behind his back and he could see that they were red and swollen and the swelling exceeded the outside diameter of the handcuffs. Supt Morris said that in his 25 years as a police



officer he had never before seen handcuffs so tightly applied around a person's wrist.

- [13] Supt Neil Banks, who had been in the New Zealand police force for 30 years, said that the handcuffs were so tight that they were restricting blood flow and the prisoner's flesh was swollen around the ratchet arm of the cuffs. The two New Zealand police officers arranged for the handcuffs to be removed.
- [14] All that evidence tells a sorry tale. I have said before that it is apparent from different cases that have come before the courts over the years that historically there has been a culture of violence in the Tongan police. I suspect that you are one of the last from that old school. It is with considerable relief, however, that the courts have noticed in recent times that this pattern is changing and the police are now much more accountable. It is a pleasing development.
- [15] I have no doubt that it would have taken some courage for the young 22-year-old police constable, just out of training school, to come and give evidence against you before the jury, given your senior status at the time.
- [16] The bodily harm charge that you were convicted of relates to you fastening the handcuffs too tightly on Lolohea's wrists behind his back and then stomping on the handcuffs which must have caused him intense pain and suffering. The first common assault charge you were convicted of relates to you punching Lolohea on the mouth and the second charge relates to you kicking him on the mouth and again kicking him in the ribs.
- [17] It took approximately one and a half months for the wounds to the victim's wrists to heal and the photographs that were produced in evidence showed the extent of the scarring which remained.
- [18] The court has before it a helpful probation report. I have also read the positive references attached to the probation report from your Town Officer and local church minister. I listened very carefully to everything that your counsel has said this morning and I have read the additional reference he produced from the Tonga Human Rights & Democracy Movement.

- [19] You are 41 years of age married with four children ranging in ages from 22 to 11 years. You joined the police force immediately after you finished Tonga College in March 1990.
- [20] The probation officer notes that you accept the jury's verdict in this case and you are truly remorseful and regret what you did. Mr Niu stressed those same factors in his mitigation submissions. That is good to see.
- [21] The probation officer also notes that your behaviour was partly influenced by emotional anger you felt towards the victim. I would accept that observation but it is a matter of concern. At your age and with your maturity you should have learned to control your emotions by now.
- [22] You should also clearly understand that the police are not above the law. As I said in another case recently, there are rules and the police must obey them.
- [23] All those officers involved in the prosecution of the complaints that were made against you on this occasion, resulting in your sentencing today deserve full credit. Hopefully, the case will send a salutary lesson to other police officers that if they are going to take the law into their own hands then it is likely that they will lose their jobs and finish up in prison.
- [24] As long ago as 1994, the then Chief Justice, Chief Justice Ward, said in an appeal case, **Hu'ahulu v Police** [1994] Tonga LR 93:

*"the fundamental point is that anyone who commits an offence of violence against another person runs a serious risk of immediate imprisonment. That will apply even to a first offender.*

*The likelihood of going to prison becomes a virtual certainty if two or more people take part in a joint attack on one person or in any case where the victim is kicked whilst he is on the ground and when a weapon of any type is used."*



- [25] The seriousness of the situation in your case is compounded, of course, because you were in control. You were in a position of absolute power.
- [26] The victim was handcuffed tightly behind his back. He could not defend himself. He had to take the beating that you dished out to him. All he could do, as one of the witnesses said, was keep apologising.
- [27] You are entitled to credit for not having any previous convictions but, of course, you would not have held such a responsible job if you did have previous convictions. You are not entitled to credit for pleading guilty because the matter had to go to trial.
- [28] Your counsel has said everything that can possibly be said on your behalf. It does not disguise the fact, however, that your offending was extremely serious and the court needs to send out a clear deterrent message to all police officers that this type of conduct will not be tolerated.
- [29] On the first count of causing bodily harm to the victim, you are convicted and sentenced to two years imprisonment. On the two assault counts you are convicted and sentenced to 9 months imprisonment. The sentences are concurrent making two years imprisonment in total.
- [30] I have given very careful thought to the question of whether I should suspend any part of the sentence. Normally, suspended sentences are reserved for cases where the accused has pleaded guilty and co-operated fully with the authorities. As with any sentencing principle, however, there are no hard and fast rules and each case must be determined on its own facts.
- [31] In this regard, I must say that I was impressed to learn from the Probation Officer that you do not challenge the jury's findings and that you now truly regret and are remorseful for what happened. As I have already noted, those points were confirmed and stressed in mitigation by your counsel. That is an encouraging sign and it is the type of responsible conduct which needs to be recognised and encouraged.

- [32] Although it is a marginal case, I am prepared to give you the benefit of a doubt that you will benefit from a suspended sentence. I have, therefore, concluded that part suspension of the sentence would, in your case, be appropriate. Of the total sentence of two years imprisonment, I am prepared to suspend the final one-year for a period of three years from the date of your release.
- [33] That means that if you commit any other offence punishable by imprisonment within three years of your release from Hu'atolitoli then in addition to the sentence that would be imposed in respect of that offending, you would also need to serve the one-year balance of your sentence which I am this morning suspending.



**DATED: 21 MAY 2010**

**CHIEF JUSTICE**