

S/General

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

---

**CR.NO.131of 2007**

22/10/07  
copy Judgment  
file

**REX**

**-V-**

**MANATU NIUTUPUUA**

**BEFORE THE HON JUSTICE ANDREW**

Counsel : Ms Mafi for the prosecution  
Mr Tu'utafaiva for the accused.

Date of Hearing : 1<sup>st</sup> October 2007.

Date of Judgment: 5<sup>th</sup> October 2007.

**Judgment**

The accused pleaded guilty to a charge of housebreaking contrary to S.173 of the Criminal Offences Act and to a charge of theft contrary to Ss.143 & 145 of the Criminal Offences Act.

The Particulars of these Offences are:

Count 1 : "on or about the 8<sup>th</sup> of June 2007 at PEA, did enter as trespasser the office of TAFOLO Gas Station at Pea which is managed by 'ANA TAFOLO and committed theft therein.

Count 2 : on or about the 8<sup>th</sup> June 2007 at Pea did take without any colour of right from 'Ana Tafolo, manager of Tafolo Gas Station approximately \$3,200 cash with the intention of defusing her permanently of such money and converting it for his own use."

In agreed summary of facts is as follows and I quote:

"On or about 8 June 2007 at Pea, the accused finished working at the Sakilini Tyre Shop at approximately 11:00pm, the accused and another from his work went to Haveluloto to drink alcohol at a friend's house. The accused and the others stopped drinking approximately between the hours of 2:00am – 3:00am on Saturday 9<sup>th</sup> June. The accused then walked to the village of Pea with the thought of breaking into the Tafolo Gas Station to steal some money so that he could buy some more alcohol to continue drink. The accused reached the Tafolo Gas Station at approximately 4:00am. The accused used a screwdriver from his workplace which is opposite the Tafolo Gas Station, and broke into the station through the entrance door to the toilets. This door faces the accuseds workplace. The accused then climbed over the next door which leads to the office, as the top half of the door was open, yet the bottom was closed. The accused then went through materials on the table which was in the office, but found no money. The accused saw that there was a cabinet, and pulled open the drawer and saw that there were 2 tins, and the accused opened the tins and saw that there was money inside of it, and took the tins of money and went out of the station the same way he had broken in. The accused then crossed to another road which leads to Liahona, and took the money out of the tins and threw the tins away and put the money in his trouser pockets. The accused then hitched a ride to the bus station outside the Tonga Water Board, and waited there until he caught a bus to Niutoua. The accused spent the money that he stole on various goods, and also gave some money away."

The accused is aged 20 and this is his first offence. He comes from a family of 7 of which he is the youngest. He left school early, largely for financial reasons and worked on the family plantation. His family rely on him for financial support.

In 2005 he obtained employment at a Tyre workshop which is behind the complainant's gas station which he broke into. He receives a daily payment of \$30. It is reported by his employer that he is a very reliable worker and that this incident was very unexpected. It is believed that this incident would not have happened except for the accused's consumption of alcohol. It appears that as young man he was drinking too much. It is now said that he has apologised to the complainant whom he obviously sees as they work in close proximity. The complainant says that he only wants the accused to take responsibility for what has happened. He does not wish the accused to be imprisoned but only wishes that he can rehabilitate himself.

I think there are prospects of rehabilitation. I accept that the accused is remorseful; that he has learned his lesson and is unlikely to re-offend. So far he has re-paid \$1,000.

He pleaded guilty at the 1<sup>st</sup> opportunity and that is deserving in my view of a reduction on sentence of 25%.

As the accused is a young first offender I propose to give him some leniency in the hope that he can become a useful member of society rather than imprisonment which could at his age have the opposite effect.

The offence is a very serious one however and it is deserving of a sentence of imprisonment. I propose to pass such sentence of imprisonment but suspend that upon conditions including the repayment of what was taken from the complainant.

Would you stand up please. For this offence you would have received a sentence of 4 years imprisonment but due to your plea of guilty that is reduced to a sentence of 3 years.

You are sentenced as follows:

On all counts you are sentenced to imprisonment for a period of 3 years. That sentence is suspended in whole upon the following conditions:

1. That you be of good behaviour for a period of 3 years.
2. That you enrol and complete the Salvation Army Drug & Alcohol awareness course.
3. You complete 120 hours community work in accordance with the work order which you shall now be given.
4. You repay to SIONE TAFOLO and 'ANA TAFOLO the sum of \$2,200 within the next 12 months.

DATED: 5 October 2007.



JUDGE