

IN THE COURT OF APPEAL OF TONGA

CRIMINAL JURISDICTION

NUKU'ALOFA REGISTRY

APPEAL NO. AC 21 of 2010

BETWEEN : LYNATH LIOU

Appellant

AND : REX

Respondent

Coram : Burchett J, Salmon J, Moore J

Counsel : Mrs Vaihu for the Appellants
Mr Kefu and Miss 'Atiola for the
Respondent

Date of Hearing : 7 October 2010.

Date of Judgment : 8 October 2010.

JUDGMENT OF THE COURT

[1] The appellant pleaded guilty in the Supreme Court to two charges under s 4 Arms and Ammunition Act. The first charge was of possession of arms without a license and the second of possession of ammunition without a license. On the first charge he was sentenced to 12 months imprisonment to be suspended for 2 years. On the second charge he was fined \$10,000 to be paid within 30 days, in default of payment 12 months imprisonment. He appeals against the \$10,000 fine on the ground that the sentence is manifestly excessive.

Background

[2] In January 2010 police discovered under a table in the appellant's office a 9 mm pistol and 60 bullets. The pistol was a semi-automatic. The appellant told the police he did not have a licence to possess either the pistol or the ammunition. In fact he could not have obtained a licence because the pistol is a prohibited weapon. The appellant was arrested. He cooperated with the police and admitted his offending. His counsel told the court that he had accepted the pistol and ammunition as security for a loan which has never been repaid. In 2001 he was convicted on two charges of conspiracy to commit arson in respect of which he was sentenced to 2 years in prison. 20 months of the sentence was suspended for 2 years.

[3] The sentencing judge rightly described the offences as serious. Because of the guilty plea and cooperation with the police he sentenced the appellant to 12 months in prison on the first charge. Because of the appellant's age (60) and his very poor state of health he suspended the whole of the sentence. He imposed the fine on the second charge.

The submissions

[4] Mr Tu'utafaiva submitted that the fine was excessive and for the Crown Mr Kefu accepted this was so. Mr Tu'utafaiva told this Court that the appellant's financial position was very poor. He used to be wealthy but he was now struggling financially. He said that the appellant could manage a fine of \$2000 but would have to borrow money to pay it. Mr Kefu submitted that a \$5000 fine would be appropriate. He pointed out that appellant was fortunate to have his prison sentence suspended because an earlier suspended sentence had obviously not served as a sufficient deterrent.

Decision

[5] We agree that the \$10,000 fine was manifestly excessive considered in the context of the sentence of imprisonment on the first charge and in the context of income levels in Tonga. If the appellant had the means we would have considered that \$5000 would have been an appropriate fine. However in the light of Mr Tu'utafaiva's submission we are prepared to reduce that to \$3000.

[6] The sentence in the Court below is amended to replace the fine of \$10,000 with one of \$3000. In all other respects the sentence stands.




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Burchett J


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Salmon J


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Moore J