

R E X

V

LATU VAINIKOLO

BEFORE THE HON. JUSTICE CATO

S E N T E N C E

[1] The prisoner pleaded guilty shortly before his trial on four counts. These were;

1. Housebreaking contrary to section 173(1) (b) of the Criminal Offences Act;
2. Theft contrary to sections 143 and 145(b) of the Criminal Offences Act;
3. Supplying a controlled chemical contrary to section 5(b) of the Illicit Drugs Control Act;

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4. Possession of illicit drugs contrary to section 4(a) of the Illicit Drugs Control Act 2003;

5. Possession of a controlled chemical contrary to section 5(b) of the Illicit Drugs Control Act 2003

[2] The matter arose in June 2007. The prisoner was charged together with others in 2009 and despite the matter being set down for trial on several occasions, the trials were repeatedly adjourned. Eventually, shortly before the trial was to proceed on the 2013, the prisoner pleaded guilty to each count.

[3] The accused burgled a Ministry of Health Storage Store on the 9th June 2007 and stole a very large amount of pseudoephedrine tablets. In all, there were 175 bottles stolen each containing 1000 tablets, making a total of \$175,000 tablets. Although the value of the pills was only \$1958, the value on the black market would be very much more. Later, the accused sold \$30,000 tablets, at an unknown price to another. That meant the prisoner or his group still retained a very large number of pills. It is unknown what happened with

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them but it seems likely they also were disposed of for illicit purposes. The other charges consist of his being found in possession of four foils of cannabis and 98 ampoules of pethidine. The final count related to possession of 13 ampoules of ephedrine.

[4] The prisoner, in his probation report, admitted that he had burgled the premises as part of a commercial criminal enterprise. Obviously, the object was to derive a very large amount of the highly prized controlled substance pseudoephedrine which is an essential ingredient in the manufacture of the illicit drug methamphetamine.

[5] I tried a co-offender with whom he was to stand trial on another charge before a jury, after the prisoner had pleaded guilty to these charges. It emerged during that trial that there was a criminal group operating in Tonga at the time who were keen to source large amounts of precursor to be used in the manufacture of methamphetamine possibly in Tonga, but more likely in an overseas destination. I, accordingly, accept what the prisoner told his probation officer that the pseudoephedrine was sourced for a criminal enterprise.

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As such, it is my view that this is very serious offending.

- [6] Heavy maximum sentences are available for both illicit drugs and controlled chemicals under the Tonga Illicit Drugs Control Act. The maximum sentence for possession and supply is 25 years and or a fine of \$750,000 or both. There is no distinction in penalty between controlled chemicals which include a precursor substance such as pseudoephedrine and illicit drugs, unlike some other jurisdictions where maximum sentences for precursors are lower than hard drugs. In the case of a precursor chemical like pseudoephedrine, which is used as an ingredient for methamphetamine (although it is commonly associated as an ingredient in the treatments for colds), it makes sense not to make a distinction in penalty. Commercial amounts of precursor are highly prized and priced in the black market and essential for the manufacture of the drug methamphetamine. This Court must heed the direction of Parliament and impose penalties that adequately reflect the seriousness of drug offending and also punish offenders who procure large amounts of pseudoephedrine for illicit commercial purposes, so as
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to deter this activity and protect the public from the development of a methamphetamine trade in Tonga where it does not yet seem to be prevalent, as it is, however, elsewhere in Australasia. That also reflects Parliament's intent that illicit drug dealing and dealing in controlled substances should be visited by serious penalties so that Tonga does not become involved in serious drug activity and further does not become a centre for the import and export of either drugs or controlled chemicals.

- [7] In my view, the appropriate charge to fix the maximum starting point for sentence in this case is the housebreaking charge which carries a maximum sentence of 10 years. This was a brazen and commercial burglary to secure a very large amount of pseudoephedrine which was acquired. Not only was the object of the burglary a substance that should have been available as medicine for common colds in Tonga, but it was a very large amount for which most was unaccounted. A deterrent sentence is called for and a sentence of five years on the housebreaking charge is fixed as the starting point before mitigation.

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[8] However, in mitigation, are the following factors;

1. The accused pleaded guilty shortly before trial. In those circumstances, I allow him a reduction of six months, which, in my view, is all that is justified after such a late guilty plea.
2. The fact that he is now married with three young children. He is the only source of financial support. However, these are not usually mitigation factors but I propose to take them into account on the issue of suspension of sentence, along with other factors in his case.
3. The fact that he became introduced to the drug scene in his later years with the defence forces as an undercover in the drug scene was causative of his later association and apparent drug addiction. This was told to his probation officer. It was confirmed that he had an extensive association with the defence force. I am prepared to believe that there must have been some connection of this kind to turn him from a member of the defence force for a significant period to an

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associate of criminals. It is certainly not unheard of for those exposed to undercover activity to become corrupted by their exposure to it, and again I take this into account on the issue of suspension.

4. He does not have a crime free record. Many years ago he was convicted of housebreaking, but as against this he had ten years service with the defence forces of Tonga and I have seen a reference that he acquitted himself well, and other references saying he is involved in community activities. Of some importance is the fact that he was convicted last year of cannabis related offences and sentenced by me to probation with conditions that he attend a drug and alcohol rehabilitation course and perform a hundred hours community work. It is reported that he attended and completed both courses satisfactorily, and this seems to have been something of an awakening in his life.

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5. He was contrite and apologised for his actions. I have read the probation report and other

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references which suggest that the course he took on alcohol and drugs was a motivating factor for him hopefully to have turned away from the world of drugs, and the reporter is optimistic he has. Possibly maturation, awareness of his domestic situation and responsibilities, as well as his impending trial on these charges and now sentencing have also been motivating factors in his desire to reform and put his drug life behind him.

[9] In my view, the only real factor, however, in mitigation is his late guilty plea and contrition for which I reduce his sentence on housebreaking to four and half years. That sentence properly reflects the seriousness of the burglary in this case related as it was to an illegal commercial enterprise. Had he pleaded earlier his discount for pleading guilty would have been significantly more.

[10] However, I consider that the matters mentioned above suggest that he is aware of the need to change his lifestyle and has taken steps to do so. It is very possible that this will be the last time he is before a

court. For these reasons, taken together with his guilty plea, apparent acceptance of responsibility, and his young family's dependence on him (also a maturing factor) I consider he is a worthy subject for a partly rehabilitative sentence. I have also taken into account that quite possibly his exposure to undercover activity was a reason for his drug taking and later involvement, in the drug scene. Consequently, I suspend the final two years of his sentence on the following conditions;

1. He is not to commit any offences punishable by imprisonment for a period of 3 years.
2. He is on his release to be placed on probation for a period of 12 months with the following conditions;
 - a. He is to live where directed by his probation officer but that is likely to be with his family;
 - b. He is to abstain from the use of alcohol for a period of 12 months;
 - c. And illicit drugs for the period of suspension;

d. He is to attend a further course on alcohol and drug abuse and a life skills course under the direction of the probation office.

[11] He is warned that should he breach any of the conditions governing the suspension of his sentence he is likely, if called upon by the Crown, to have to serve the final two years of his sentence. The conditions imposed on release are imposed to further his rehabilitation on his release from prison.

[12] On the other charges, I impose;

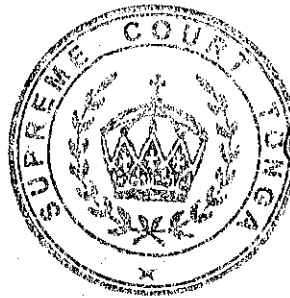
1. 12 months on the theft charge;
2. 2 years and six months for supplying controlled substances;
3. 9 months for possession of cannabis and other substances;
4. 6 months for possession of ephedrine.

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These sentences are to be served concurrently with the housebreaking sentence of four and half years, and the sentences are backdated to the time when the prisoner was remanded in custody by me on Friday the 8th August, 2013.

DATED: 14 AUGUST 2013



[Handwritten signature]

JUDGE