

10 **Sailosi v R**

Court of Appeal  
Morling, Ryan & Quilliam JJ  
Appeal No.4/1991

7 June, 1991

20 *Appeal - sentence - alternatives for property crimes.*  
*Criminal law - housebreaking - sentence*  
*Sentencing - suspended sentence - probation*

The appellant was sentenced to 6 months imprisonment of a charge of housebreaking, to run consecutively with a 12 months term of imprisonment on an activated, formerly suspended, sentence. On appeal.

Held:

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1. There is a lack of suitable alternative sentences for first offenders in respect of property crimes.
  2. The initial sentence (for imprisonment) imposed on the appellant was inappropriate.
  3. A court can extend leniency and sympathy if the appropriate circumstances exist.
  4. In this case the court should take a limited risk and impose a sentence of probation.

### Judgment

This is an appeal by Falepeau Sailosi against a sentence of 6 months imprisonment imposed on the 21st of January, 1991 in the Supreme Court at Tonga. That sentence was to be consecutive upon a 12 months suspended sentence which had previously been imposed on the 16th of November, 1989. The appeal is also to be treated at the request of counsel, as an application for leave to appeal out of time in respect of the 16th of November, 1989 sentence. The circumstances here are rather unusual. The appellant now has a total of 3 convictions for house breaking and theft. When we say 3 we mean 3 convictions on each charge but all convictions relate to the same dwelling.

On the 24th of August, 1988 the appellant was sentenced in the Magistrate's Court to six months imprisonment. He was then still at school and was 16 years of age. He appealed against that sentence but the sentence was upheld on appeal. He then reappeared in November 1989 for house breaking and theft in relation to the same property and was given a suspended sentence. Yet again he returned to and violated the same property and was sentenced on the 21st of January, 1991 to a total effective sentence of 18 months imprisonment.

The basis for the appeal is that the young man concerned is now settled in at school and has received glowing reports from the school authorities. It is notable that at the hearing in January, the Court had the benefit of a psychiatric report. That report contained a statement that the appellant was not suffering from any psychiatric illness, but did have an antisocial personality trait which led to his repeated criminal conduct. It seems to us that the learned Judge was quite concerned with that aspect of the documentation before him. He dealt with the appellant as an intelligent person, but also as a repeat offender.

Once again, we advert to the comments made by us in the Siliako Appeal as to a lack of suitable alternative sentences for first offenders in respect of perproperty crimes. It does seem to us that the initial sentence imposed upon Sailosi was inappropriate. However, there is nothing that this Court can do about that at this point in time. What we are concerned to ensure is that this particular offender does not continue with a life of crime and that he can see that the Courts can extend leniency and sympathy if the appropriate circumstances exist. We think that in this particular case the Court should take a limited risk which we emphasize is a limited risk given the reports of the school authorities and also the attitude of the psychiatrist which has now been clarified by evidence given in this Court. In this respect of course we have a distinct advantage over the learned Judge in the lower Court. The appropriate sentence in our view at this point in time is not to simply convict and discharge as his Counsel suggested but to impose a sentence of probation. The appellant's counsel felt that to have something like this hanging over his head might result in a further repeat performance of the crimes already committed, but we must say this Mr Sailosi, that sooner or later you are going to have to be able to withstand the ridicule and teasing of your peers, and if you cannot stand up to that sort of behaviour and act as a man should act, then we see little hope that you would be able to withstand other pressures which could lead you towards the prison gates yet again. Probation will be imposed for a period of 12 months and you must know of course that if you breach probation at all, then you will be brought before the Court and sentenced on these two matters and the sentence will in all probability be severe one. This your last chance Mr Sailosi, please make the most of it.