

Resonance

IN THE SUPREME COURT OF TONGA CR 116 OF 2011
CRIMINAL JURISDICTION
NUKU'ALOFA REGISTRY

REX

-V-

'ALEFOSIO VAIANGINA

BEFORE THE HON. JUSTICE SHUSTER

HAVING HEARD - Crown Counsel, and from the defendant in person.

The defendant appears for sentencing - having pleaded guilty on arraignment on the 28th July 2011; to the second count in an indictment, alleging two counts of [1] Indecent assault and [2] Common Assault on a prison officers wife. The defendant pleaded not guilty to the first count.

On 28th July 2011 the case was adjourned to fix a trial date and the defendant was remanded in custody as he is serving a sentence. On the next appearance the defendant asked to be re-arraigned on count one and he pleaded guilty after he was asked if anyone had forced him to change his plea he said NO.

On re- arraignment on 29th July 2011 the defendant was told he would be given full credit for his change of plea and, the case was adjourned for the preparation of a PSR - the defendant was remanded in custody for the preparation of the PSR in view of the nature and seriousness of the offences and the fact he is serving a sentence. It should be noted that the defendant is NOT a first time offender but he had fully admitted his part in offending to the police and on his second appearance to this court.

THE BRIEF FACTS

The prosecution claims the facts revealed that on 02nd February 2010 the defendant was involved in an incident when he attended the home of the resident prison warder in Vavau to make a complaint. The warder was away in Tonga at the time on business. According to the prosecution on hearing this the defendant grabbed a machete and made to assault the warden's wife. However she managed to wrestle the machete from the defendant. The defendant attempted to strangle the victim she fell to the floor and when she did so the defendant indecently assaulted his victim by touching her breasts and her vagina..

The defendant admitted the facts to the police and to this court and he has told me in open court that he has apologized to his victim

On 16th September 2011 the defendant appeared for sentencing. Having considered all the facts of the case, including the contents of the PSR - considering the fact that the defendant pleaded guilty and, the fact the defendant co-operated with the police and with this court - and has apologized to his victim. Having heard from the defendant in person and noting that he is NOT a first time offender. I told the defendant my starting point for an attack on the victim the wife of a public servant, when the defendant was a serving prisoner is a sentence of 3-4 years on a not guilty plea.

The defendant is sentenced as follows:-

Count 1 – The defendant is sentenced to TWO YEARS in prison –

Count 2 – The defendant is sentenced to NINE MONTHS in prison – this is to be served as a CONSECUTIVE sentence to count one, and the sentences of thirty three months - are to start at the expiration of the defendant's current sentence.

This is to be a deterrent sentence, applying the principles enunciated in **Crown –v- Cunningham –**

<p>NB - this sentence of two years nine months [33 months] is to run from 09-05-2013 the date of the prisoners scheduled release –</p>

CONSECUTIVELY

because these offences were committed while the defendant was serving a twelve year sentence for robbery and these offences involve use and threats of violence

A Copy of these sentencing remarks are to be served on the Prison's Commissioner

VALEFOSIO VAIANGINA

BEFORE THE HON. JUSTICE SHUSTER

HAVING HEARD - Crown Counsel and from the defendant person

The defendant's plea for sentencing - to the court

DATED 16th SEPTEMBER 2011



Shuster
JUDGE

prison officers wife. The defendant pleaded not guilty to the first count.

On 20th July 2011 the case was adjourned for a trial date and the defendant was returned to custody as he is serving a sentence. On the next appearance the defendant asked to be re-assigned to count one and he pleaded guilty after he was asked if he had formed him to charge his plea to count 193.

On re-assignment in court the defendant was told he would be given 12 months in custody for the first count. The court adjourned for the preparation of a plea agreement and the defendant was in custody for the preparation of the plea agreement. The defendant was of the opinion that he was not guilty to the first count. It was noted that the defendant is NOT a violent person and he has not committed his part in the offence. The court adjourned for the preparation of the plea agreement.

REASONS FOR SENTENCE