

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

CR 20 of 2009

REX

-v-

PENI TAUFA

BEFORE THE HON. JUSTICE SHUSTER

Counsel: Mr. V. Fa'otusia for the accused

Date of Sentencing: 16th September 2011

The defendant was charged with an offence of murder alternate manslaughter I grievous bodily harm, three offences contained in an indictment which was filed in this court on 16th March 2009

The circumstances involve a sledge hammer attack on the victim which the Crown say occurred on 01st December 2008, when the defendant tied his 29 year old victim by his hands and feet then laid his victim face down on the floor and the defendant hit the victim's head with a sledge hammer killing his victim, instantly.

According to the Crown, the defendant was arrested and interviewed under caution on 3rd December 2009 from 09:30 – 12:15. He was asked a total of 141 questions and answers and he readily admitted his part in the crime.

According to our court records the defendant appeared before Ford CJ on 8th April 2009 when the court record indicates the defendant was ordered to

be detained in custody under part IV of the Mental Health Act 2001 and on that date Ford CJ adjourned the matter - sine die.

On 21st July 2011 this file was located - as one of three murder cases which had each previously been listed before Ford CJ - and which had not been completed:- so on finding that - a directions hearing was ordered for 26th July 2011, and enquiries were made to trace the whereabouts of the defendant.

On 17th August 2011 the defendant was located and listed to appear in open court. A psychiatric report was requested as to the defendant's fitness to plead to the indictment. Doctor Puloka told the court that he had examined the defendant that morning and in his opinion the defendant was fit to plead and capable of giving instructions to his lawyer.

On 17th August 2011 the defendant was formally arraigned and he pleaded guilty to the crime of manslaughter - the defendant was convicted, and the case was adjourned for sentence to 16th September 2011 at 1400 hours.

This court orders in respect of counts one, and three in the indictment [the murder and the GBH charge] that those two charges are to lie on file, and are marked "**Not to be proceeded with**" except with the order of this Court, or the Court of Appeal

On 16th September 2011 - the defendant appeared for sentence.

Having considered all the facts of the case and having heard from the psychiatrist - It would be apparent to anyone, that the defendant was mentally disturbed and potentially dangerous - if he was to be released from detention; then he would be, or, he might pose a threat to members of the general public. In this Court's view the defendant requires to complete on going medical and psychiatric treatment over quite some time.

It must be realized that it is an aggravating feature - that in this case the defendant tied his 29 year old victim, with ropes, he bound the victim's hands and his feet behind his back and he placed his victim face down on the floor, then he took a sledgehammer and hit the back of the victim's head splitting the head wide open, severing the victim's head from his shoulders.

On the facts of this particular case - I would be failing in my duty - if I did not impose a long deterrant sentence - but a sentence which the defendant would continue to receive - appropriate treatment for - his mental illness

There can be no doubt this defendant is and was in December 2008 a DANGER to the public. Accordingly the defendant is sentenced to TWENTY years imprisonment - which is to run from the date of the defendant's first arrest which was 3rd December 2008.

This Court hopes that the defendant will continue to receive appropriate treatment and assistance from the psychiatric department of the Vaiola Hospital.

This is to be a deterrent sentence - applying the principles enunciated in the case of Crown v Cunningham and is imposed to protect members of the public

A copy of this Order is to be served on the Prison service and the Viola Hospital Psychiatric Department

Dated: 16 September 2011



J U D G E