

IN THE SUPREME COURT OF TONGA

CR 241 and 242 OF 2011

CRIMINAL JURISDICTION

NUKU'ALOFA REGISTRY

REX

-V-

SIONE FINAU FIFITA

LOLESIO FEHOKO

BEFORE THE HON. JUSTICE SHUSTER

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

The defendants appears for sentencing - having each pleaded guilty on first arraignment on 18th November 2011; to an indictment, alleging on file **CR241-2011** - three counts of [1] Attempted theft and [2] Possession of arms without a licence and [3] Possession of ammunition without a licence these offences were allegedly committed in July of this year.

In respect of file **CR 242-2011** the co-accused pleaded guilty on first arraignment on 18th November 2011; to an indictment, alleging on file CR242-2011 - a single count of [1] Attempted theft and that offence was also allegedly committed in July of this year.

On 18th November 2011 the facts were opened and were agreed, and the case was adjourned for the preparation of a PSR and, the defendants were remanded on bail for sentencing to 13th December 2011 at 14.00.

THE BRIEF FACTS

The brief facts are - Sione Fifita encouraged the co-accused his neighbour to come with him to steal a pig from a pig pen. Armed with a firearm and ammunition they travelled in Sione Fifita's mother's car to the pig pen where they both climbed over the fence and once inside the pig pen they discharged two shots inside the pen. Fortunately they missed hitting any of

the pigs. Residents startled by the gunshots, wrote down the vehicles registration number and the defendants fled the scene. They were later arrested. Both defendant's admitted their part in the offending to the police when arrested, and on their first arraignment in this court.

It was a condition of the defendant's bail that they co-operate in the making of their PSR – it should be noted that the defendant s are NOT first time offenders in that each have a prior conviction recorded against them for offences of dishonesty.

On 13th December 2011 the defendants appeared for sentencing. Having considered all the facts of the case, including the contents of the PSR's and associated references, and, considering the fact the defendants each pleaded guilty and having heard from the defendants in person and noting the defendants each have a previous conviction - for dishonesty and that a firearm was discharged when they went out deliberately to steal pigs. I told the defendants that a deterrant sentence was entirely warranted in this case and had they pleaded Not Guilty and been found guilty after a trial they would each have been imprisoned, for not less than 18-21 months.

In file CR 241 – 2011 the defendant is sentenced as follows:-
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Count 1 - The defendant is sentenced to **THREE YEARS** in prison – but that sentence of imprisonment is suspended for 3 years conditional upon the defendant- keeping the peace and being of good behaviour and committing no further offending during the period of the suspension of the sentence of imprisonment – which starts from todays date.

Count 2 - The defendant is sentenced to **TWO YEARS** in prison – but that sentence of imprisonment is suspended for 3 years conditional upon the defendant- keeping the peace and being of good behaviour and committing no further offending during the period of the suspension of the sentence of imprisonment – which starts from todays date.

Count 3 - The defendant is sentenced to **THREE YEARS** in prison – but that sentence of imprisonment is suspended for 3 years conditional upon the defendant- keeping the peace and being of good behaviour and

committing no further offending during the period of the suspension of the sentence of imprisonment – which starts from today's date. All sentences are concurrent to each other.

In file CR 242 – 2011 the defendant is sentenced as follows:-

Count 1 - The defendant is sentenced to **THREE YEARS** in prison – but that sentence of imprisonment is suspended for 3 years conditional upon the defendant- keeping the peace and being of good behaviour and committing no further offending during the period of the suspension of the sentence of imprisonment – which starts from today's date.

In addition because the defendants used a firearm in the commission of the offence of attempted theft, each defendant will perform 240 hours of Community Service cleaning up the sea shore and the grass edges on public roads as ordered by the Probation Service. The court recognizes the maximum of 120 hours CSO, but to keep the offenders out of prison each defendant volunteers to perform 240 hours CSO

I certify I have warned the defendant about committing any further offences during the period of his suspended sentence – and of the consequences of failing to perform his CSO as ordered by this Court.

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

A copy of this order is to be served on the defendant and on the Probation Service

NB>THE FIREARM AND AMMUNITION ARE FOREFIT TO THE CROWN

DATED 13th December 2011

J U D G E