

IN THE COURT OF APPEAL OF TONGA

CRIMINAL JURISDICTION

APPEAL NO. AC 11 of 2011

NUKU'ALOFA REGISTRY

[CR 156 of 2010]



BETWEEN : REX
- Appellant

AND : VILIAMI MAKAHOKOVALU TUPUTUPU
- Respondent

Coram : Burchett J
Salmon J
Moore J

Counsel : Mr Sisifa for the Crown
Mr Pouono for the Respondent

Date of Hearing : 19 September 2011.

Date of Judgment: 30 September 2011.

JUDGMENT OF THE COURT

- [1] This Crown appeal (which is not opposed) raises the same point of sentencing law as was raised in *Rex v Pomale*, the decision in which is also being handed down today. The reasons in that matter are to be read as if also incorporated in these reasons, although the actual sentences are not identical.
- [2] In this matter, there are six counts, on which sentences were imposed as follows:

Count 1 – 3 years imprisonment ;

Count 2 – 1 year imprisonment ;

Count 3 – 4 years imprisonment ;

Count 4 – 4 years imprisonment ;

Count 5 – 4 years imprisonment and

Count 6 – 4 years imprisonment.

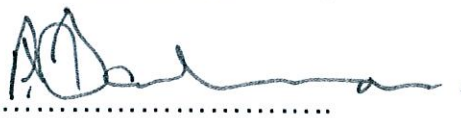
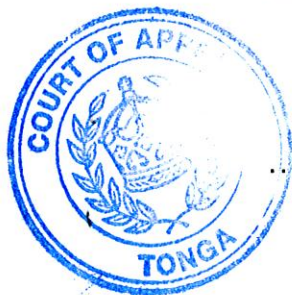
All the sentences were made concurrent, and the learned judge suspended 3½ years of the 4 years effective sentence, so that six months would be served from 1 April 2011.

[3] As the suspension ordered was beyond power, the appeal is allowed; the sentences imposed and orders made are set aside; and this Court substitutes the following:

- (a) On Count 1 the Respondent is sentenced to 3 years imprisonment ;
- (b) On Count 2 the Respondent is sentenced to one year imprisonment ;
- (c) On each of Counts 3, 4, 5 and 6, the Respondent is sentenced to 3½ years imprisonment ;
- (d) All sentences are to be concurrent ;
- (e) The Respondent is to serve 6 months imprisonment from 1 April 2011, the remaining 3 years of his concurrent sentences being suspended for 3 years.



Burchett J



Salmon J



Moore J