

IN THE SUPREME COURT OF SAMOA

HELD AT APIA

CRIM. NOS: S.123/97-126/97
S.143/97

BETWEEN: POLICE

Informant

A N D: MAIAVA TOTIVE TOIU,
male of Fasitoo-uta and
Satolepai, Savaii

Defendant

Counsel: M Leung Wai for prosecution
R S Toailoa for defendant

Hearing: 19 May 1998

Sentencing: 22 June 1998

ORAL SENTENCING OF SAPOLU, CJ

Now, one thing I must make clear, no Judge passes sentence would take into consideration matters which was not evidence before the Court when considering the question of guilt or innocent of an accused or when considering what sentence should be imposed when the accused is convicted of an offence. So it is useless for a lawyer to tell the Judge he should not take into account what is published by the press because the Judge should be presumed to know that such matters are not relevant and should not be taken into account. So often the Court has stated quite clearly that when

considering the guilt or innocence of an accused, only matters which are placed before the Court are relevant. So anyone who has heard what counsel for the defence has said in this Court must not take it seriously because I am telling you now that a Judge does not take into account matters published outside of the Court by newspapers or the media but only evidence that was presented in Court.

The Court also takes into account matters raised in the probation report and attached testimonials in considering the question of sentence. Relevant matters raised in a plea in mitigation are also taken into account. Now in this case, the Court takes into consideration in mitigation the fact that the defendant is a first offender and at the age of 46 years this is the first time he is appearing before the Court on a criminal charge. The defendant's personal circumstances relating to his family as explained in the probation report and has been referred to by his counsel are also taken into consideration. It appears from the testimonials for the defendant that was prepared by one of the chief immigration officers that the defendant was a good worker whilst in the employment of the Immigration Office and that during the two and a half (2½) years he served in that office, he rose from the lowest position of office clerk to that of senior immigration officer which he held at the time that he was suspended for the offences for which he is appearing for sentence. It is a pity that the accused, having risen this high in the Immigration Office to the level of senior immigration officer, has involved himself in this matter.

Apart from the mitigating factors raised by counsel for the defendant and those raised in the probation report and testimonials, the Court must also consider the seriousness of the charges in this case. It is clear to the Court from the evidence that

was presented by the witnesses at the trial that what happened in this case was that the defendant issued five passports under five different names of people from the village of his wife and those passports were issued by the defendant to an unknown woman from the United States. I do not accept what the defendant told the Court that he did not know these people whose names were used for the issuance of these passports and those people were the people of his wife's village at Fasitoouta. That story is simply unbelievable.

Now the Court is of the view that the issuing and forging of a passport under the name of one person and to give it to another person as if it is the passport of that other person is a very serious matter. I am of the clear view that a deterrent sentence should be imposed in this case so that any public servant who is inclined to commit this kind of offence in the same circumstances would be deterred from doing so. Taking into account all the mitigating factors and the seriousness of the charges against the defendant as well as the seriousness of the circumstances of this case, the defendant is convicted on each of the five charges of forgery against him and is sentenced to twelve(12) months imprisonment. Those sentences are to be concurrent.

T.P.N. Sap...
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CHIEF JUSTICE

Solicitors:

Attorney-General's Office, of Apia for informant
Toailoa Law Firm, of Apia for defendant