

R v Talia'uli

Supreme Court, Nuku'alofa

10 Hampton CJ

Cr 758/96

22 January, 1997

Criminal law - possession of pistols - sentencing
Arms & Ammunition - possession - pistol - ammunition
Sentencing - possession - pistol and ammunition

20 The defendant pleaded guilty to charges of possessings pistols without licence and possessing ammunition without licence.

Held:

1. The Arms and Ammunition Act and Regulations were to ensure proper control and regulation of potentially lethal weapons. A check thereby is kept on the type and condition of firearms and the type and character of potential holders of firearms.
- 30 2. There was flagrant disregard of the Act by the defendant and certain sinister and suspicious aspects to the possession by him.
3. A term of 2 years imprisonment was appropriate and on balance, it was suspended for 3 years.
4. An order for forfeiture of the arms and ammunition was made with a recommendation to the Minister of Police for their destruction.

Counsel for prosecution : Ms Simiki
Counsel for defendant : Mr W Edwards

Judgment

You have pleaded guilty in this Court to two charges brought under section 4 of the Arms & Ammunition Act namely possessing arms without a licence and possessing ammunition without a licence. Each offence carries a maximum period of imprisonment of 5 years. That maximum penalty available underlines, in my view, the seriousness with which the Legislature views potential offences against these sections of the Arms & Ammunition Act.

The general philosophy, of the Arms & Ammunition Act and the Regulations made, is to ensure proper control and regulation of the possession of potentially lethal weapons in the hands of members of the public.

It is the scheme that licences have to be held by persons if they are going to possess use or carry firearms. A check is thereby kept on the type and the condition of firearms and ammunition, and the type and character of the holder, or potential holder of such firearms. In the circumstances which I will come to shortly you have flagrantly, in my view, disregarded the provisions of the Arms & Ammunition Act.

You are 42 years of age; you have not previously appeared, I am told, before any Criminal Court in the Kingdom. You have a wife and six (6) children aged from 15 to 5 years; the children are all at school. I accept the wife and children are dependent upon you.

In these sentencing remarks, and in the sentence which I intend to impose, I take account of and put what weight I can on, your pleas of guilty to the two charges. But those guilty pleas have to be put in context to some extent because initially you indicated not guilty pleas to this Court, back in August last year, and the matter was set for a trial. It was about a week before the trial that you indicated, through your counsel, that you would be pleading guilty to the charges.

You are, I am told by your counsel, and I am assured by the ten or so testimonials that have been provided, of good character and repute. The testimonials or character references come from a widely representative and quite impressive cross-section of the Community and I do put some store on what has been said, generally, about you. But I hasten to add that the man who is described there in those references would not be the man I would have expected to flout the law, and for 2 years or so, have deliberately kept out of the sight of the authorities and out of the knowledge of the authorities two hand guns of this nature. The character references speak highly of various aspects of your life; of your concern for your family, your friends and your Community; of your Church; and of various Sporting Organisations; and all of the things which you have done and continue to do for those Organisations and people.

The references also speak highly of your work in your employment in Night Clubs and in your activities primarily for the Church with youth groups. Those latter two aspects though, that is your work with youth and your contact with youth, and your employment in Night Clubs give me, however, some concern in relation to your present offending. The question I ask, is whether it is appropriate to have such an offender in the Church and youth Organisations? And as well, I ask myself these questions: "whether it is appropriate that a man who is prepared to flout the law and possess hand guns, should be influencing the youth of the Kingdom?" And "should a man who is prepared to obtain and retain possession of hand guns be running Night Clubs?" And that again, is a question the appropriate authority in relation to Night Clubs, might want to consider.

These guns were unlawfully obtained by you. They are small, they are easily concealed when carried on the person. When taken with the fact that for some 8 years or so you have worked in Night Clubs, they have, in my view, sinister connotations. And those sinister aspects are not eased in my mind at all by what I am told by your counsel, namely that normally the two guns were kept at your place of work, that is at the Night Club. One simple question, why?

80 The actions here are a far cry from the responsible citizen that your counsel, and the references, referred to. You obtained these guns in circumstances that I regard as somewhat unsatisfactory. If you are taking them (the guns) as a responsible man (as you claim) off drunken US sailors, why not just simply hand them straight to the police, the appropriate authority; or rather than taking possession of them at all, notify the police that you had some drunken sailors in your premises who were armed with hand guns.

100 One can only express the deepest of suspicions about your motives. You then held on to these guns for something like 2 years and I note that when they were found by the police they were in serviceable order, able to be used, the magazines and the ammunition kept in proximity to the guns. You say, through your counsel, that having taken possession of them you in fact forgot about them. Again I believe I could be forgiven for being somewhat sceptical about that claim, somehow doubtful of that claim.

110 Again one asks the question, why retain, hold on to, these guns at your place of work for two years? Again I am not satisfied with the claim, and am somewhat doubtful about the claim that these guns were kept locked away from 2 years and that it was just sheer bad luck and coincidence that when the police execute the warrant, the guns are found in an unlocked van, sitting on the seat of the van.

This is serious offending. It is made more serious, in my view, by the fact that these are hand guns. Such are not common in Tonga I am told and nor should they be. The people of this Kingdom do not want people walking round with guns in their pockets, guns that are able to be hidden on the person, lethal weapons.

120 On the first count, that is the charge of possession of the 2 automatic pistols without a licence, the appropriate term of imprisonment is one of 2 years in my view. In relation to the second count, that is the possession of the ammunition without a licence that charge is related to the first count and is not as serious in itself as the first count and appropriately could be dealt with, and should be dealt with, by a sentence of 6 months imprisonment, that to be concurrent with the other term, that is to run with the other term. That means a total period of 2 years imprisonment. In my view, that term is fully deserved by you; you are no public spirited citizen in what you have done here.

130 The issue which I have found most difficult to resolve about you is whether, in the circumstances, any or all of that sentence of imprisonment should be suspended. If there had been any previous criminal offending of any serious nature then there would have been no question in my mind of suspension. If I had been able to impose a fine as well as a suspended sentence, that would have eased the path so far as my thinking was concerned. But given the provisions of the Criminal Offences Act, I do not believe I have the power to impose both a sentence of imprisonment, even if of suspended, and a fine as well.

In the end what saves you, and what influences me to exercise my discretion and suspend, are these factors:

140 - First, apart from the possession itself there is no evidence as to your use, in any

way, of the weapons.

- Secondly, your lack of any previous offending. You are now, as I have said, aged 42.
- Thirdly, your family.
- Fourthly, your guilty pleas.

I intend to suspend the whole of both sentences of imprisonment for 3 years. That is the maximum time, the greatest time, I can hold the sentence over your head in effect. If you commit any criminal offence in the next 3 years, then you will be brought back, not only on that criminal offence, but you will then serve the sentences on these charges. So if at any time in the next 3 years you are convicted of a criminal offence punishable by imprisonment, you will be sentenced straight to the 2 years that I have imposed today, do you understand? You may count yourself a very lucky man. It is only by the finest of balances that I have decided to allow the sentence to be suspended. If you want to retain the friendship and the respect of the people who wrote such glowing letters about you, you had better look well at yourself and your conduct.

Under section 37 of the Arms & Ammunition Act, I make an order for the forfeiture of the 2 guns, the magazines and the ammunition, that are the subject of these charges. I note, Ms Simiki, that in terms of the Arms and Ammunition Regulations, where arms and ammunition are forfeited (it's in Regulation 5, sub-regulation 5) they, that is the arms and ammunition, may be disposed of as directed by the Minister of Police. It is in the Minister's hands but, for what it is worth, I offer a recommendation from this Court that these guns and magazines be destroyed.

If the legislation allowed me that authority, that would have been my order. But my only authority is to make an order as to forfeiture. I make that as a recommendation to be passed on to the Minister. It is in his hands obviously.

Having ordered forfeiture, I direct that my staff immediately hand the guns, the magazines, and the ammunition to the armourer of the police, for proper disposal to the police in that way.