IN THE COURT OF APPEAL OF THE REPUBLIC OF VANUATU
(Criminal Appellate Jurisdiction)

CRIMINAL APPEAL CASE No.01 OF 2015

BETWEEN: **ANNA SARAI WILLIAMS**
Appellant

AND: **PUBLIC PROSECUTOR**
Respondent

Coram: ***Hon. Justice Bruce Robertson***
Hon. Justice Oliver Saksak
Hon. Justice Daniel Fatiaki
Hon. Justice John Mansfield
Hon. Justice Dudley Aru
Hon. Justice Mary Sey
Hon. Justice Stephen Harrop
Hon. Justice David Chetwynd

Counsel: *Mr. E. Molbaleh for the Appellant*
Mr. J. W. Timakata for the Respondent

Date of Hearing: *17 July 2015*

Date of Judgment: *23 July 2015*

JUDGMENT

1. Anna Sarai Williams was sentenced by the Chief Justice to an effective term of 3 years and 4 months imprisonment after she had pleaded guilty (at what was classified at the first reasonably available opportunity) to five offences under the provisions of the Penal Code Act. There was one count of Forgery under section 140, two counts of Misappropriation under section 125(b) and two counts of Attempted Forgery under sections 140 and 28. The maximum penalty for each of these offences is 10 or 12 years imprisonment. She was arrested and appeared in the Magistrate's Court in March 2014. After 2 weeks in custody she was remanded on bail.

2. Ms. Williams was on 29 July 2014 committed to the Supreme Court for trial with the first appearance on 2nd September 2014. There were then 86 counts of Forgery contrary to sections 139 and 140, 86 of Uttering Forged Documents contrary to section 141(b), 2 Misappropriation counts contrary to sections 123 and 125(d) and one charge of False Accounting contrary to section 130C(a) (b). Some thought needs to be given to the practice of the committals like this with 175 separate charges as trials of such cases are not sustainable.

3. Prior to the 2nd September 2014 additional charges were filed of Attempted Forgery contrary to sections 28 and 140 Attempting to Utter a Forged Document contrary to sections 28 and 141 and Attempted Forgery contrary to sections 140 and 128.

4. The case was thereafter adjourned first to 9th September 2014 and then to 17th September on which date the learned Chief Justice issued a minute setting out all the charges before the court and advising when the question of pleas were to be dealt with. There were further adjournments until 1st October 2014 when eventually the pleas were entered to the 5 counts referred to above. This was more than 6 months after arrest and when Ms. Williams had admitted what she had done.

5. A timetable was set for the prosecution to file sentencing submissions by 29th October. These were in fact filed on 14th October. The defence had until 21st November to file their submissions. The timetable then had what was described as "sentence submissions" on 29th November. There is not a comprehensive explanation before us as to what happened thereafter. Suffice to say that the defence sentencing submissions were filed on 27th February 2015. The sentence was pronounced in open court on 16th June 2015.

6. Ms Williams was the finance officer of the Vanuatu National Training Council ('*VNTC*') and between January 2013 and 2014 she obtained about VT6.5 million by forging signatures on cheques and taking for her own use and benefit monies which belonged to her employer. The full details are contained in the sentencing notes of the Chief Justice. An approach she frequently used was to insert a fictitious figure in front of a cheque sum which was legitimately being drawn and to convert to her own private use the additional sums fraudulently obtained as a result of this contrivance. She also obtained VT30, 000 from a cheque for VT50, 000 intended for the staff Christmas function. Sometimes she forged the signatures of one or other of the authorised signatories from the VNTC account and she attempted to obtain VT10 million from UNESCO and VT5 million from VNPF contribution in making false claims. It was these last two particularly audacious acts which led to her apprehension.

7. When confronted Ms. Williams admitted to the CEO and staff members of VNTC what she had done although she did not make any statement to the police when invited to do so.

8. The Chief Justice noted that she was in a senior position of responsibility and trust which she seriously abused. The ongoing forgeries were

committed over a period of approximately a year and the funds obtained were substantially dissipated by gambling at the casino.

9. The learned Chief Justice concluded that a custodial sentence was justified and necessary in this case for the following reasons:

> *"First, it denounces and condemns you on behalf of the society of the seriousness and gravity of your dishonest and fraudulent crimes. Second, it punishes you for your crimes and third, it will deter others not to commit similar type of dishonest and fraudulent crimes in the future."*

10. He then had regard to relevant sentencing judgments in this Republic including *Gamma v. Public Prosecutor [2007] VUCA 19, Criminal Case 08 of 2007 (30 November 20070; Public Prosecutor v. Tureleo [1995] VUSC 16; Criminal Case 48 of 1995 (27 December 1995); Public Prosecutor v. Mala [1996] VUSC 22; Criminal Case 42 of 1995 (2 January 1996); Public Prosecutor v. Mael [2010] VUSC 14; Criminal Case 75 of 2009 (19 March 2010).*

11. It is always valuable when previous authoritative decisions are considered as consistency of approach is essential. Courts must however be vigilant to analyse the previous decisions to ascertain the determined starting point, any uplifts and the reasons for them and allowances for guilty pleas and mitigation. Simple reference to the final effective sentence is unhelpful and non-informative.

12. The Chief Justice concluded that 6 years imprisonment was the appropriate starting point for the offences of Forgery, Attempted Forgery and Misappropriation with a concurrent sentence for 6 months on one other count.

13. The judgment then turned to matters in mitigation. He noted that the appellant had originated from Tongoa and having been married twice her husbands had died. She had 8 children between the ages of 2 and 26. She was at the time of sentencing unemployed and had no previous conviction. She was remorseful and regretted what had occurred. He provided an allowance of 6 months and for the mitigating factors, and for the routine one-third for a plea of guilty. The Chief Justice made allowance for time spent in custody and concluded that the effective sentence must be 3 years and 4 months. He then said

> *"I now consider if I can suspend your imprisonment sentence. I consider the plea of your family not to send you to custody. However, the seriousness and gravity of your crimes in the present case do not*

justify a suspension. I decline the suspension. I order you to serve a term of 3 years and 4 months imprisonment and this with immediate effect."

14. In the written submissions counsel for the appellant contended that the starting point should have been 3 years and that after balancing the aggravating and mitigating factors an end sentence of 2 years imprisonment should have been imposed. Before us Mr. Molbaleh did not press that point and in our view that was appropriate. The starting point imposed by the judge and the allowances made were clearly within his sentencing discretion. An appeal is not a wholesale review of the sentence but a disciplined exercise as to whether the decisions taken were properly available.

15. The entire thrust of the submissions before us was that the sentence should have been suspended in its entirety. Counsel began this exercise by referring to section 37 of the Penal Code Act which provides that if an offender is convicted of an offence punishable by imprisonment, the court must in addition to other sentencing options it might impose, have regard to possibility of keeping the offender in the community so far as that is practicable and consistent with the safety of the community. The submission was that Ms. Williams was no threat to the community in the way that a person committed of sexually violent offences can properly be classified and so she should not be imprisoned.

16. We acknowledge that the offending by Ms. Williams is of a different character but we do not accept the argument that a person convicted of what is sometimes called "*white collar*" crime is not a threat to the safety of the community. This woman had a senior position of responsibility and trust which she abused to the detriment of her employer. The community (including employers) must be protected from those who behave in this way. The consequences of which may be very detrimental.

17. Attention was then drawn to section 58 of the Penal Code which provides for the suspension of sentences in part.

"58. *(1) If a court has decided that the case is so serious as to warrant imprisonment, and that it is not appropriate to suspend the whole sentence, it should consider whether there are grounds for suspending the sentence in part.*

(2) A court may suspend a sentence in part if the sentence is for three years or less."

18. The substantive provision of the suspension of the sentence of imprisonment is found in Section 57(1)(a) which provides:-

> ***"57.*** *(1) The execution of any sentence imposed for an offence against any Act, Regulation, Rule or Order may, by decision of the court having jurisdiction in the matter, be suspended subject to the following conditions:*
>
> *(a) If the court which has convicted a person of an offence considers that:*
>
> *(i) in view of the circumstances; and*
>
> *(ii) in particular the nature of the crime; and*
>
> *(iii) the character of the offender,*
>
> *it is not appropriate to make him or her suffer an immediate imprisonment, it may in its discretion order the suspension of the execution of imprisonment sentence it has imposed upon him or her, on the condition that the person sentenced commits no further offence against any Act, Regulation, Rule or Order within a period fixed by the court, which must not exceed 3 years;"*

19. As the words of the statute make clear, suspension in part was not an option which was available to the learned Chief Justice because he had imposed a sentence of more than 3 years imprisonment. It appears to us somewhat anomalous that a sentence of more than 3 years imprisonment may be suspended in whole but cannot be suspended in part, whereas, a sentence of less than 3 years imprisonment can be.

20. We are totally in accord with the Chief Justice that this sort of offending involving as much money as it did, and committed over a lengthy period of time with careful and contrived systems meant Ms. Williams had necessarily forfeited the right to remain in the community.

21. However there are two factors which were not argued before the Chief Justice and which we see as important.

22. Without opposition we received new evidence in this case with regard to the position of Ms. Williams since her arrest and her responsibilities to her two children. This came from George Songi, chairman of the Seaside (Tongoa) Council of Chiefs and from Pastor Joshua Nakapue which stressed the vulnerability of Ms. Williams' two youngest children who are just 2 and 4 and whose father died on 14 September 2014. They stressed the fact that Ms. Williams' life has turned around since her arrest and that she is now acting

with responsibility and compassion and concern within her family and in the community generally.

23. The other issue which was not raised by counsel but which has caused us concern is the length of time which elapsed between the arrest of Ms. Williams and her eventual sentencing. This was a period of more than 15 months for all of which she was on bail but for 2 weeks. For someone who has never previously offended to wait that long to have matters resolved is a severe detriment and disadvantage in itself. The Supreme Court has recognized that this can be a matter of special mitigation eg. Public Prosecutor v. Josette Doriri [2011] VUSC 2 and Public Prosecutor v. Ken Houman Criminal Case 54 of 2013 (8 July 2015).

24. The appellant was initially charged with an enormous number of counts which was never an appropriate way to deal with the matter. It took too long to sort out the sensible charges to which she immediately pleaded guilty. This took more than 6 months.

25. What happened from the 1st October through to June is difficult to ascertain. Some of the delay may have been institutional and some may be attributable to her own counsel but we find nothing which suggests that she added to the delays, apart from one very brief period about the time that her second husband died.

26. Delay also has consequential effects such as the time when rehabilitation is effective under 58ZH of the Penal Code.

27. We have concluded that in respect of that lengthy period of delay a further allowance should be made. We quantify it as one third of the total period of 15 months so effectively 5 months. This should be deducted from the 3 years and 4 months sentence which the Chief Justice determined without reference to this factor and which we otherwise confirm.

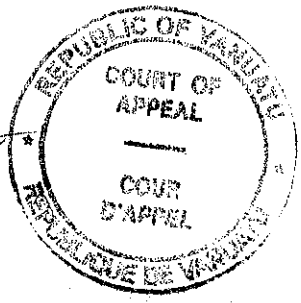
28. Accordingly the appeal is allowed and the effective term of imprisonment effective from 16 June 2015 should be 2 years and 11 months imprisonment.

29. That means that there is the jurisdiction available to us to consider a suspension of the sentence in part. Like the Chief Justice we are of the view that this offending was so serious that there must be a period of full-time imprisonment but we are satisfied that the competing factors of her clean record, her change of life style and most particularly her parental obligations to these two young children without another parent, can reasonably be given weight too.

30. Under Section 58 we are satisfied that the term of 2 years and 11 months imprisonment should be served by an immediate term of 18 months imprisonment and the balance of 1 year and 5 months should be suspended on the normal statutory terms.

DATED at Port-Vila this 23rd day of July, 2015

BY THE COURT



Hon. Justice Bruce Robertson